



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-28072024-255828
CG-DL-W-28072024-255828

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 28] नई दिल्ली, जुलाई 14—जुलाई 20, 2024, शनिवार/ आषाढ़ 23—आषाढ़ 29, 1946
No. 28] NEW DELHI, JULY 14—JULY 20, 2024, SATURDAY/ASHADHA 23—ASHADHA 29, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1411.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के केन्द्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड के अधीन, निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:

- उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, मंडल-I
- उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, मंडल-II
- उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, सतना मंडल

4. उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, रीवा मंडल
5. उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, कटनी मंडल
6. उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, दमोह मंडल
7. उप/सहायक आयुक्त का कार्यालय, केंद्रीय जीएसटी एवं केंद्रीय उत्पाद शुल्क, छिंदवाड़ा मंडल

[फा. सं. ई-11017/3/2017- हिन्दी-2-अधिसूचना]

ले. कर्नल एम. के. सिंह, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 2nd July, 2024

S.O. 1411.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government, hereby notifies, the following offices under Central Board of Indirect Taxes and Customs, Department of revenue where more than 80% staff has acquired the working knowledge of Hindi:

1. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Division-I
2. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Division-II
3. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Satna Division
4. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Rewa Division
5. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Katni Division
6. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Damoh Division
7. Office of the Deputy/Assistant Commissioner, Central GST & Central Excise, Chhindwara Division

[F. No. E-11017/3/2017- Hindi-2-Notification]

Lt. Col. M.K. SINGH, Director (OL)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 जुलाई, 2024

का.आ. 1412.—निक्षेप बीमा और प्रत्यय गारंटी निगम अधिनियम, 1961 (1961 का 47) की धारा 6 की उप-धारा (2) के खंड (ii) के साथ पठित धारा 6 की उप-धारा (1) के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. तरुण अग्रवाल को नामित किए जाने संबंधी अधिसूचना की तारीख से तीन वर्ष के लिए अथवा अगले आदेशों तक, जो भी पहले हो, निक्षेप बीमा और प्रत्यय गारंटी निगम के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 8/03/2017-ओबी-II]

सुषमा किन्दो, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th July, 2024

S.O. 1412.—In exercise of the powers conferred by clause (d) of sub-Section (1) of section 6 read with clause (ii) of sub-section (2) of section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), the Central Government hereby nominates Dr. Tarun Agarwal as a Director on the Board of Directors of the Deposit Insurance and Credit Guarantee Corporation (DICGC) for a period of three years from the date of notification of his nomination or until further orders, whichever is earlier.

[F. No. 8/03/2017-BO-II]

SUSHMA KINDO, Director

नई दिल्ली, 10 जुलाई, 2024

का.आ. 1413.—निक्षेप बीमा और प्रत्यय गारंटी निगम अधिनियम, 1961 (1961 का 47) की धारा 6 की उप-धारा (2) के खंड (ii) के साथ पठित धारा 6 की उप-धारा (1) के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. तरुण अग्रवाल को नामित किए जाने संबंधी अधिसूचना की तारीख से तीन वर्ष के लिए अथवा अगले आदेशों तक, जो भी पहले हो, निक्षेप बीमा और प्रत्यय गारंटी निगम के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 8/03/2017-बीओ-II]

सुषमा किन्दो, निदेशक

New Delhi, the 10th July, 2024

S.O. 1413.—In exercise of the powers conferred by clause (e) of sub-Section (1) of section 6 read with clause (ii) of sub-section (2) of section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), the Central Government hereby nominates Prof. Partha Ray as a Director on the Board of Directors of the Deposit Insurance and Credit Guarantee Corporation (DICGC) for a period of three years from the date of notification of his nomination or until further orders, whichever is earlier

[F. No. 8/03/2017-BO-II]

SUSHMA KINDO, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1414.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिक्योरिटी एंड इंटेलिजेंस सर्विसेज इंडिया लिमिटेड के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (02/2022) प्रकाशित करती है।

[सं. एल - 12011/22/2021- आई आर (बी-I)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th July, 2024

S.O. 1414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 02/2022) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of The M/s. Security & Intelligence Service (India) Ltd. and their workmen.

[No. L-12011/22/2021- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.02 OF 2022

Parties: Employers in relation to the management of

The M/s. Security & Intelligence Services (India) Ltd.

AND

Their Workmen

Appearance :

On behalf of Management : None

On behalf of the Workmen : None

Dated 5th January, 2023

A W A R D

Parties are found absent when the matter is called.

In fact the record reveal the Union, who has espoused the present industrial dispute on behalf of contractor workman Shri Utpal Kumar Mal has failed to put its appearance even after due service of notice reference.

Similarly, the Management/Contractor employer has failed to put its appearance inspite of having received notice of reference and appearance like the Union, which has espoused the dispute.

Under the circumstance, this Tribunal assume the Union who has raised the dispute is no more interested to conduct the case or proceed with the reference case. More so, it has failed to file any statement of claim.

The Govt. of India, Ministry of Labour in exercise of power conferred by Sec. 10(1)(d) & (2A) of the I.D. Act, 1947 has referred the following dispute for adjudication by this Tribunal.

“Whether the action of the Management of M/s. Security & Intelligence Services (India) Ltd. in changing legitimate duties from regular to reliever of Sri Utpal Kumar Mal, ICICI Bank Security Guard, is legal and / or justified? If not, as to what relief the concerned workman is entitled to?”

The Union who has raised the above dispute before the Govt. and on whose initiative the dispute has been referred to this Tribunal vide order No. L-12011/22/2021-IR(B-1) dated 09.11.2022 failed to appear to pursue the reference case.

Since there is no statement of claim also and as such there is no dispute to adjudicate by this Tribunal.

Accordingly, the Reference case No. 02 of 2022 is disposed. An award is passed accordingly.

Send copy of Award to the Ministry.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1415.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिजनेस सॉल्यूशन प्रा. लिमिटेड के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (22/2022) प्रकाशित करती है।

[सं. एल-12011/15/2022- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 11th July, 2024

S.O. 1415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.22/2022) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of M/s Forntline (NCR) Business solution Pvt. Ltd. and their workmen.

[No. L-12011/15/2022- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.22 OF 2022

Parties: Employers in relation to the management of
M/s Frontline (NCR) Business Solution Pvt. Ltd.

AND

Their Workmen

Appearance :

On behalf of Management : None

On behalf of the Workmen : None

Dated 13th February, 2023

A W A R D

Today too both side are found absent when the matter is called for hearing.

The Union which has espoused the present dispute has failed to appear and proceed with the hearing of the present case inspite of due service of notice upon it.

Notice issued to the Management in the address given in the reference order has returned undelivered with postal endorsement "Left".

In view of the decision of the Hon'ble Supreme Court in Madan & Co. vs. Wazir Jaivir Chand reported in (1989) S. C. C (1) 264, the notice returned undelivered with postal endorsement 'Left' is a good service as it is the duty of the addressee to leave behind the address where he is traceable or moved either with the landlords of the address or authorised someone to receive postal delivery on his behalf.

In the present case, the employer having failed to do so, it can be safely presumed that notice of this case has been duly served upon it.

The Govt. of India, through Ministry of Labour and vide Order No. L-12011/15/2022 [IR (B-I)] dated 28.04.2022 has referred the following dispute for adjudication.

"Whether the action of Employer (M/s Frontline Business Solution Pvt. Ltd., Contractor of Axis Bank Ltd.) is legal and justified by way of terminating the 19 contractual workmen (list enclosed)? If not, what relief the workmen are entitled to?"

Unfortunately, the Union Bank Employees Unity Forum, West Bengal, which has espoused the present dispute on behalf of these 19 retrenched contractor's employees has failed to appear and pursue with the dispute by filing claim statement and by adducing evidence. In fact, it has failed to appear before the Tribunal inspite of receiving notice.

Under the circumstance, there is nothing in the record to decide the issue referred by the Ministry for adjudication.

Accordingly, no dispute award is passed and Reference Case No. 22 of 2022 is disposed of.

Send copy of order to the Ministry for doing the needful.

Supply copy of this award to the parties.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1416.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार परियोजना निदेशक, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण; मेसर्स दिनेश चंद्र अग्रवाल इंफ्रास्ट्रक्चर लिमिटेड; मेसर्स ईगलदीप कोलाघाट ओएमटी प्रोजेक्ट प्राइवेट लिमिटेड; मेसर्स मायर्या एंटरप्राइज; मेसर्स गौर गुचैत सर्विस प्रोवाइडर्स, के प्रबंधन के संबद्ध नियोजकों और उनके कामगार द्वारा -पूर्व मेदिनीपुर ज़ेला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीआईटीयू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, कोलकाता, पंचाट(संदर्भ संख्या REF. NO.16 OF 2023) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2024 को प्राप्त हुआ था।

[सं. एल-42025-07-2024-122-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th July, 2024

S.O. 1416.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16 OF 2023) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Project Director, National Highway Authority of India; M/s. Dinesh Chandra Agarwal Infrastructure Ltd.; M/s. Eagledeep Kolaghat OMT Project Pvt. Ltd.; M/s. Mayrya Enterprise ;M/s. Gour Guchait Service Providers, and Their Workmen represented by Purba Medinipur Zela Security Service & Allied Workers Union (CITU)**, which was received along with soft copy of the award by the Central Government on 11.07.2024.

[No. L-42025-07-2024-122-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 16 OF 2023

Parties : Employers in relation to the management of

1. **The Project Director, National Highway Authority of India.**
2. **M/s. Dinesh Chandra Agarwal Infrastructure Ltd.,**
3. **M/s. Eagledeep Kolaghat OMT Project Pvt. Ltd.,**
4. **M/s. Mayrya Enterprise and**
5. **M/s. Gour Guchait Service Providers**

AND

Their Workmen represented by Purba Medinipur Zela Security Service & Allied Workers Union (CITU).

Appearance :

On behalf of Contractor Employer No. 1, 2 & 3 : Absent

On behalf of Contractor Employer No. 4 & 5 : Mr. Affan Ali , Ld. Advocate.

On behalf of the Union/Workmen : Mr.Uddipan Banerjee, Ld. Advocate.

Dated: 23rd April, 2024

A W A R D

Ld. Counsel for Contractor Employer nos. 4 & 5 is present.

The Union is also present through its Ld. Counsel.

Ld. Counsel for the Union submits the dispute under present reference is already a subject matter of dispute in Reference Case No.25 of 2019. That due to inadvertence the Central Govt., Ministry of Employment & Employment has once again referred the same dispute to this Tribunal and which give rise to the present reference case. The Reference Case no.25/2019 is pending for hearing. Therefore, he prays for passing necessary order regarding disposal of the present reference case. Ld. Counsel for contractor employer no.5 and 6 too agree with the submission made by Ld. Counsel for the union.

Considered.

Perused the schedule of Reference Case No.25 of 2019. The Central Govt., Ministry of Labour by order No. L-42011/156/2019 –IR (DU), New Delhi dt.05-06-2023 has referred the following dispute to this Tribunal for adjudication and the schedule read as follows:

“Whether the action of the management of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. contractor of NHAI, Howrah in terminating the service of 7 workers (as per list attached), as raised by Purba Medinipur Zilla Security Service and Allied Workers Union, is proper, legal and justified? If not, what relief the disputant workers are entitled to and what directions, if any, are necessary in the matter?”

While the present dispute has been referred by Dy. Labour Commissioner, Kolkata vide Order No.Kol-700020/08/2023-Dy.CLC (C) dt.23-08-2023 and the schedule of such reference read as follows:

“Whether the action of the Management of the contractors of NHAI and the Management of NHAI is justified in terminating the services of the 7 workmen in a manner not laid down in the provisions? If not, then what relief these 7 workers are entitled to?”

In both the above Reference Orders, the names of the Contractor of NHAI appears to be M/s. Dineshchandra R. Agarwal, Infracon Pvt. Ltd., M/s. Eagledeep Kolaghat Haldia OMT Project Pvt. Ltd., M/s. Maurya Enterprise (Sub Contractor) and M/s. Gour Guchait, and principal employer to be NHAI.

Therefore, it appears the subject matter of dispute in both the above mentioned Reference Cases are same and it relates to termination of 7 contractor employees of NHAI. In view of pendency of Reference Case no. 25/2019 on the same subject matter, the present Reference on the same subject matter or on the same dispute is not maintainable.

Accordingly, Reference Case no.16 of 2023 is disposed of being not maintainable and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1417.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलपति, जामिया मिलिया इस्लामिया विश्वविद्यालय, जामिया नगर, ओखला, नई दिल्ली; शर्मा एंटरप्राइजेज, नवादा मेट्रो स्टेशन के पास, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और आई.डी. संख्या 103/2023 श्री श्याम, कामगार, द्वारा-अखिल भारतीय आम मजदूर ट्रेड यूनियन के माध्यम से, कालकाजी, नई दिल्ली; आई.डी. संख्या 121/2023 श्री सुनील कुमार, कामगार, द्वारा-अखिल भारतीय आम मजदूर ट्रेड यूनियन, कालकाजी, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या. 103 & 121 of 2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 09.07.2024 को प्राप्त हुआ था।

[सं. एल-42025-07-2024-123-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th July, 2024

S.O. 1417.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103 & 121 of 2020) of the **Central Government Industrial Tribunal cum Labour Court – II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Vice Chancellor, Jamia Millia Islamia University, Jamia Nagar, Okhla, New Delhi ; Sharma Enterprises, Near Nawada Metro Station, New Delhi , and, I.D. No. 103/2023 Shri Shyam, Worker, Through- All India General Mazdoor Trade Union, Kalkaji, New Delhi ; I.D. No. 121/2023 Shri Sunil Kumar, Worker, Through- All India General Mazdoor Trade Union, Kalkaji, New Delhi**, which was received along with soft copy of the award by the Central Government on 09.07.2024.

[No. L-42025-07-2024-123-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 103/2023

Sh. Shyam,

Through- All India General Mazdoor Trade Union,
170, Bal Mukund Khand, Giri Nagar, Kalkaji, New Delhi-110019.

I.D. No. 121/2023

Sh. Sunil Kumar, S/o Sh. Brahampal,

Through- All India General Mazdoor Trade Union,
170, Bal Mukund Khand, Giri Nagar, Kalkaji, New Delhi-110019.

Versus

1. **The Vice Chancellor,**
Jamia Millia Islamia University,
Jamia Nagar, Okhla, New Delhi-110025.
2. **Sharma Enterprises,**
92-B, Plot No-01, Ground Floor, Nawada,
Near Nawada Metro Station, New Delhi-110059.

AWARD

The appropriate government, Sh. P.K. Venu Gopal, under Secretary had sent two references referred dated 06.06.2023 and 25.07.2023 to this tribunal for adjudication with the following words.

“Whether the Claims of Sh. Shyam and Sh. Sunil Kumar, S/o Sh. Brahampal through All India General Mazdoor Trade Union, New Delhi vide letter dated 11.10.2021 against the management of M/s Sharma Enterprises, New Delhi (Contractor) under Jamia Milia Islamia University, New Delhi that their services were terminated w.e.f. 01.09.2020 and 01.10.2020 without notice, without reason and without due payment which is violation of Section 33 and 25 F of the I.D Act, 1947 as their common demand through Union is pending in CGIT cum LC, No.-2, New Delhi bearing ID No. 155/2020, is proper, legal and justified? If yes, to what reliefs as sought vide letter dated 11.10.2021 are the disputant worker entitled and what directions, if any, are necessary in the matter?”

Notices were issued to both the parties. AR for the management-1 & 2 have been appearing before this tribunal. Both claimants have not been appearing since long. They have not come forward to file their claim statements before this tribunal, despite, providing a number of opportunities.

In these circumstances, when the workmen are not interested in pursuing their claim. This tribunal has no option except to pass the no disputant award. Hence, no disputant award is passed. Awards are passed accordingly. Files are consigned to the record room. Copies of these awards are hereby sent to the appropriate government for notification under section 17 of the I.D Act 1947.

Date 08th, July, 2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1418.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक (एचआर), भारत हेवी इलेक्ट्रिकल्स लिमिटेड, रानीपुर, हरिद्वार, के प्रबंधन के संबद्ध नियोजकों और महासचिव, हेवी इलेक्ट्रिकल्स वर्कर्स ट्रेड यूनियन, (एचईईपी), हरिद्वार; महासचिव, सीएफएफपी कर्मचारी संघ (एआईटीयूसी), हरिद्वार; महासचिव, हेवी इलेक्ट्रिकल्स मजदूर यूनियन, (एचईईपी), हरिद्वार; महासचिव, एचईएल वर्कर्स एसोसिएशन (एआईटीयूसी), (एचईईपी), हरिद्वार; महासचिव, बीएचईएल श्रमिक यूनियन, (एचईईपी), हरिद्वार; महासचिव, सीएफएफपी श्रमिक यूनियन, हरिद्वार; महासचिव, सेंट्रल फाउंड्री फोर्ज वर्कर्स यूनियन, सीएफएफपी, हरिद्वार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या.157/2020& 158/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 09.07.2024 को प्राप्त हुआ था।

[सं. एल-42025-07-2024-125-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th July, 2024

S.O. 1418.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 157/2020& 158/2020) of the **Central Government Industrial Tribunal cum Labour Court – II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager (HR), Bharat Heavy Electricals Ltd., Ranipur, Haridwar, and, The General Secretary, Heavy Electricals Workers Trade Union, HEEP, Haridwar; The General Secretary, C.F.F.P. Employees Associations (AITUC), Haridwar ; The General Secretary, Heavy Electricals Mazdoor**

Union, HEEP ,Haridwar; The General Secretary, HEL Workers Associations (AITUC), HEEP ,Haridwar; The General Secretary, BHEL Shramik Union, HEEP ,Haridwar; The General Secretary, CFFP Shramik Union, Haridwar ;The General Secretary, Central Foundry Forge Workers Union, CFFP, Haridwar, which was received along with soft copy of the award by the Central Government on 09.07.2024.

[No. L-42025-07-2024-125-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE HONB'LE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT NO-II, ROUSE AVENUE DISTRICT COURT COMPLEX, I.T.O., NEW DELHI-110002.

I.D. No.157/2020 & I.D. No.158/2020

1. The General Secretary,
Heavy Electricals Workers Trade Union, HEEP,
161/3/1, BHEL Ranipur, Haridwar –249403.
2. The General Secretary,
C.F.F.P. Employees Associations (AITUC),
219/3/5–B, BHEL Ranipur, Haridwar –249403.
3. The General Secretary,
Heavy Electricals Mazdoor Union, HEEP ,
117/3/1, BHEL Ranipur, Haridwar –249403.
4. The General Secretary,
HEL Workers Associations (AITUC), HEEP ,
59/3/5–B, BHEL Ranipur, Haridwar –249403.
5. The General Secretary,
BHEL Shramik Union, HEEP ,
S–406, Shivalik Nagar, BHEL Ranipur, Haridwar –249403.
6. The General Secretary,
CFFP Shramik Union,
127/3/1, BHEL Ranipur, Haridwar –249403.
7. The General Secretary,
Central Foundry Forge Workers Union, CFFP,
215/3/3, BHEL Ranipur, Haridwar –249403.

...

Applicant/Claimant

VERSUS

The General Manager (HR),
Bharat Heavy Electricals Ltd.,
Ranipur, Haridwar –249403.

...

Managements/Respondents

AWARD

DATED 20.02.2024

ID No. 157/2020, 158/2020

20th February, 2024

Present:

Sh. Vikas Singh, Ld. AR for the Claimant.

Sh. A.K Roy, Ld. AR for the management.

Both the parties had stated that matter has been compromised. The AR for the management has placed on record the authority letter by which he was authorized by the president of the Union to withdraw these cases because of the settlement arrived between the Union and management. Statement of the AR of the management Sh. Vikas Singh has been recorded separately.

In view of the above said statement for these matters/claims stand dismissed as withdrawn as settled. Awards are accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. Files are consigned to record room. A copy of this award is placed in each of the file.

20th February, 2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1419.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रजिस्ट्रार, दिल्ली विश्वविद्यालय, दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री गजराज सिंह, कामगार, द्वारा-दिल्ली मजदूर संघ, तीस हजारी, दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या. 159/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 09.07.2024 को प्राप्त हुआ था।

[सं. एल-42025-07-2024-126-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th July, 2024

S.O. 1419.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 159/2020) of the **Central Government Industrial Tribunal cum Labour Court – II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Registrar, University of Delhi, Delhi, and, Shri Gajraj Singh, Worker, Through – Delhi Labour Union, Tis Hazari, Delhi**, which was received along with soft copy of the award by the Central Government on 09.07.2024.

[No. L-42025-07-2024-126-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE HONB'LE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-LABOUR COURT NO-II, ROUSE AVENUE DISTRICT COURT COMPLEX, I.T.O., NEW DELHI-110002.

I.D. No.159/2020

Sh. Gajraj Singh, S/o Late Sh. Bidha Ram,

Through – Delhi Labour Union,

Aggarwal Bhawan, G.T. Road, Tis Hazari,

Delhi-110054.

...Applicant/Claimant

VERSUS

The Registrar,

University of Delhi,

Delhi-110007.

...Managements/Respondents

AWARD

DATED 07.02.2024

ID.NO. 159/2020

7TH February, 2024

Present: Sh. Siddharth Sapra, Ld. AR for the claimant.

Sh. Rajat , proxy Ld. AR for the management.

Siddharth Sapra stated that he has instructions from the workman to withdraw the present claim as he has started receiving the pensionary benefits from the management which he had claimed in the present dispute. Statement of Sh. Siddharth Sapra is recorded separately below:

Siddharth Sapra, the present General Secretary of the Delhi Labour Union on oath

I hereby affirm that the claimant has started receiving the pensionary benefits as claimed by him in the present dispute and therefore I (on instructions from the claimant) am willing to withdraw the present dispute as nothing remains in present case.

In view of the above statement, No dispute award is passed herein. Copy of this award is sent to the appropriate government for notification under section 17 of the ID Act. Record of this file is consigned to record room.

RO & AC

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1420.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई सी आई सी आई बैंक लिमिटेड के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (31/2014) प्रकाशित करती है।

[सं. एल-12012/13/2014- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 11th July, 2024

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 31/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen.

[No. L-12012/13/2014- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.— 31/2014

Reference No. L-12012/13/2014-IR (B-I)

Dated: 09.04.2014

श्रीमती बबली देवी पत्नी श्री कैलाश चन्द्र R/o D- 91-92, फेज-2, इंदिरा नगर, झालाना झुंगरी, जयपुर, (राज.)।

.....प्रार्थी

बनाम

1. चीफ मैनेजर, ICICI Bank Ltd., चोमू सर्किल, सी-स्कीम, जयपुर।
2. शाखा प्रबंधक, ICICI Bank Ltd., बीस दुकान, आदर्श नगर, जयपुर।

.....अप्रार्थीगण/विपक्षी

उपस्थित:—

: श्री कुणाल रावत, अभिभाषक प्रार्थी।

: श्री मुनेष चन्द्र शर्मा, अभिभाषक (श्री रुपिन के. काला, अभिभाषक की ओर से) विपक्षीगण।

: अधिनियम :

दिनांक : 06.02.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 09.04.2014 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में निम्नांकित विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :-

“क्या प्रबंधन आई.सी.आई.सी.आई. बैंक लि., जयपुर की कर्मकार श्रीमती बबली देवी पत्नी श्री कैलाश चन्द्र, सफाई कर्मचारी की नौकरी में नियमित न किया जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है? ”

2. दिनांक 30.06.2014 को प्रार्थी द्वारा दावे का अभिकथन प्रस्तुत किया गया जिसके तथ्य संक्षेप में इस प्रकार है।
3. प्रार्थी की नियुक्ति वर्ष 1990 में पार्ट टाइम सफाई कर्मचारी के रूप में राजस्थान बैंक, आदर्श नगर शाखा में हुई थी। प्रार्थी को 225/- रु. मासिक वेतन दिया जाता था। इस बैंक का विलय 13.08.2010 को ICICI बैंक में हो गया। 13.08.2010 से प्रार्थी विपक्षी सं. 2 के यहा नियमित कार्य कर रही है और नियमित होने का अधिकार रखती है। प्रार्थी ने क्षेत्रीय श्रम आयुक्त (केन्द्रीय) के समक्ष नियमित करने हेतु प्रार्थना पत्र प्रस्तुत किया लेकिन विपक्षीगण ने कोई संतोष जनक जबाब नहीं दिया इसलिये क्षेत्रीय श्रम आयुक्त ने 05.03.2014 को असफल वार्ता घोषित कर प्रतिवेदन भेज दिया। किंतु 45 दिनों की अवधि में भी रेफरेन्स बना कर श्रम न्यायालय को नहीं भेजा। प्रार्थी 1990 से बैंक में नियमित कार्य कर रही है। प्रार्थी से बाद वाले श्रमिकों को नियमित श्रमिक के रूप में नियुक्त कर दिया है, विपक्षी का यह व्यवहार अनुचित श्रम व्यवहार है। अतः वाद स्वीकार कर प्रार्थी को वर्ष 1990 से नियमित करने का आदेश पारित किया जावे और देय परिलाभ दिलाये जावें।
4. विपक्षीगण ने वादोत्तर दिनांक 19.01.2015 को प्रस्तुत किया और यह कहा है कि प्रार्थी द्वारा प्रस्तुत दावा अधिनियम की धारा 2 (k) के अन्तर्गत औद्योगिक विवाद नहीं है। विपक्षी संस्थान के कर्मकारों ने प्रार्थी के संबंध में विवाद उठाने के लिये कोई प्रस्ताव पारित कर किसी व्यक्ति अथवा यूनियन को अधिकृत नहीं किया है इस लिये यह विवाद औद्योगिक विवाद नहीं है। अधिनियम की धारा 2 A के अन्तर्गत, सेवा समापन न होने के कारण यह विवाद की श्रेणी में नहीं आता। प्रार्थी पूर्ववर्ती बैंक ऑफ राजस्थान की कर्मचारी नहीं थी। वह मात्र झाड़ू-पोछा व टायलेट की सफाई के लिये 30-40 मिनट प्रतिदिन कार्य करती थी। विपक्षी बैंक ने सफाई कार्य को ऐजेन्सी के सुपुर्द किया हुआ है इसलिये प्रार्थी को विपक्षी बैंक के नियोजन में नहीं रखा जा सकता है। वर्तमान में आईरिस सर्विसेज कम्पनी में प्रार्थी नियोजित है और वेतन भुगतान भी इसी कम्पनी द्वारा किया जाता है। विपक्षी बैंक का कोई नियंत्रण और हस्तक्षेप प्रार्थी पर नहीं है। प्रार्थी विपक्षी बैंक में स्थाई नियुक्ति पाने की अधिकारी नहीं है। प्रार्थी 6 घंटे से कम प्रति सप्ताह सफाई कार्य करने बैंक ऑफ राजस्थान में आती थी इस दौरान वह अन्य स्थानों पर भी कार्य करने को स्वतंत्र थी। आईरिस सर्विसेज कम्पनी को इस विवाद में पक्षकार नहीं बनाया गया है। विपक्षी और प्रार्थी के मध्य कर्मकार और नियोक्ता के संबंध नहीं हैं अतः प्रार्थी द्वारा प्रस्तुत वाद अस्वीकार किया जावे।
5. दिनांक 25.05.2015 को प्रार्थी ने वादोत्तर के कथनों को अस्वीकार करते हुये अतिरिक्त कथन प्रस्तुत किये हैं।
6. प्रार्थी ने अपने साक्ष्य में स्वयं बबली देवी (प्रार्थी) को परीक्षित किया। किंतु कोई प्रलेख साक्ष्य में प्रदर्शित नहीं किया।
7. विपक्षीगण ने अपने साक्ष्य में ललित मोहन शर्मा, मुख्य प्रबंधक एवं सुरिन्द्र सिंह शेखावत को परीक्षित किया तथा प्रलेखीय साक्ष्य के रूप में प्रदर्श M- 1 से प्रदर्श M- 6 तक प्रलेखों को प्रदर्शित किया।
8. दिनांक 17.01.2024 को मेनें उभयपक्ष के परस्पर विरोधी तर्कों पर विचार किया तथा उपलब्ध साक्ष्य एवं प्रस्तुत किये गये न्यायिक दृष्टांतों में पारित विधि पर मनन किया।
9. उभय पक्ष के अभिवचनों एवं तर्कों के आधार पर इस विवाद में निम्नांकित विचारणीय बिन्दु उत्पन्न हुये हैं:
 1. क्या प्रार्थी दिनांक 13.08.2010 से विपक्षी सं. 2 के अधीन नियमित कार्य कर रही है तथा प्रार्थी एवं विपक्षी के मध्य कर्मकार और नियोक्ता का संबंध है?

.....प्रार्थी

2. क्या प्रार्थी के बाद वाले श्रमिकों को विपक्षी ने नियमित श्रमिक के रूप में नियुक्त कर दिया एवं प्रार्थी को नियमित नियुक्ति न देकर अनुचित श्रम व्यवहार किया?

.....प्रार्थी

3. क्या प्रार्थी अनुबंधित फर्म मै. आईरिस सर्विसेज की कर्मचारी है तथा साफ सफाई के कार्य हेतु विपक्षी बैंक की आदर्श नगर, शाखा में कार्य करती है इस प्रकार प्रार्थी विपक्षी बैंक की कर्मचारी नहीं है?
-विपक्षीगण
4. क्या प्रार्थी द्वारा प्रस्तुत दावा औद्योगिक विवाद अधिनियम की धारा 2 (k) के अन्तर्गत विपक्षी संस्थान के कर्मचारों की सारवान संख्या द्वारा कोई प्रस्ताव पारित कर प्रार्थी के संबंध में विवाद प्रस्तुत करने हेतु प्राधिकृत न करने तथा स्वयं प्रार्थी द्वारा ही विवाद प्रस्तुत करने के आधार पर औद्योगिक विवाद नहीं है तथा इस अधिकरण द्वारा न्याय-निर्णयन योग्य नहीं है?
-विपक्षीगण
5. अनुतोष क्या हो?
10. उपयुक्त बिन्दुओं के संदर्भ में प्रार्थी के विद्वान अभिभाषक का तर्क है कि प्रार्थी वर्ष 1990 से 2010 तक राजस्थान बैंक में तथा उसके बाद ICICI बैंक में, विलय के उपरांत लगातार कार्य कर रही है इस तथ्य को विपक्षी के साक्षी ललित मोहन शर्मा द्वारा स्वीकार करते हुये यह कहा गया है कि प्रार्थी अप्रैल, 2011 से ICICI बैंक में डेली वेजेज के आधार पर कार्य कर रही है। विपक्षी के साक्षी सुरिन्द्र सिंह शेखावत ने भी कहा है कि फरवरी, 2011 से प्रार्थी बैंक में लगातार कार्य कर रही है। उनका यह भी तर्क है कि माननीय राजस्थान उच्च न्यायालय द्वारा प्रार्थी को औद्योगिक विवाद प्रस्तुत करने की अनुमति दी गई है। प्रार्थी द्वारा अपनी शिकायत ऑल इंडिया ट्रेड यूनियन कॉंग्रेस की तरफ से पेश की गई है। प्रार्थी चूंकि राजस्थान बैंक की कर्मचारी रही है इस लिये राजस्थान बैंक का विलय ICICI बैंक में होने पर प्रार्थी का विपक्षीगण की कर्मचारी हो जाना प्रमाणित होता है। प्रार्थी का मै. आईरिस सर्विसेज से कोई लेना देना नहीं है। वह रोज 6 घन्टे कार्य कर रही है। अप्रार्थी द्वारा आईरिस सर्विसेज के माध्यम से प्रार्थी की PF/ ESI की राशि कटवाना अनुचित श्रम व्यवहार है। प्रार्थी का नियोजक विपक्षी बैंक है, जिसका प्रार्थी पर वास्तविक नियंत्रण एवं पर्यवेक्षण है। इस लिये प्रार्थी लंबी सेवा अवधि के आधार पर नियमित नियुक्ति की अधिकारी है। उन्होंने अपने तर्क के समर्थन में SB CWP No. 6216/2002 श्रीमती बबली देवी बनाम बैंक ऑफ राजस्थान व अन्य आदेश तिथि 02.09.2009 प्रस्तुत किया।
11. अप्रार्थीगण के अभिभाषक का यह विरोधी तर्क है कि प्रार्थी ने यह विवाद स्वयं ही बिना किसी यूनियन या विपक्षी के कर्मचारों की सारवान संख्या द्वारा समर्थित किये बिना प्रस्तुत कर दिया है जो अधिनियम की धारा 2 (k) के अधीन औद्योगिक विवाद नहीं है। वास्तव में प्रार्थी मै. आईरिस सर्विसेज नामक सेवा प्रदाता फर्म की कर्मचारी है जो विपक्षी बैंक को कर्मचारी उपलब्ध करवाती है। यह तथ्य विपक्षी बैंक की ओर से मै. आईरिस सर्विसेज के मध्य निष्पादित अनुबंध प्रदर्श M- 3 से प्रमाणित है। प्रार्थी और विपक्षी के मध्य नियोक्ता और कर्मकार का संबंध नहीं है। इसलिये ये वाद पोषणीय नहीं है। विपक्षीगण ने अपने तर्क के समर्थन में निम्न लिखित न्यायायिक दृष्टांत प्रस्तुत किये:—
1. 2007 (113) FLR 395 (दिल्ली) Management of Messers Hotel Samrat v/s Government of N.C.T. and others.
 2. 2012 (135) FLR 993 (enzkl) टी. एम. राममूर्ति बनाम यूनियन ऑफ इण्डिया व अन्य।
 3. 1/2009 1/2 13 SCC 374 International Airport Authority of India v/s International Cargo Workers Union and Another.
 4. 2001 (91) FLR 182 Steel Authority of India and others v/s National Union Water Front Workers and others.
12. तर्कों एवं विधि पर विचार किये जाने के उपरांत विचारणीय बिन्दुओं पर विनिश्चय इस प्रकार है:—
13. **विचारणीय बिन्दु सं. (1) व (3)**
14. उपयुक्त दोनों बिन्दु परस्पर अन्तरवलित है। इसलिये इन दोनों बिन्दुओं के संबंध में साक्ष्य एवं तथ्यों का विवेचन एक साथ करते हुये विनिश्चय किया जा रहा है।
15. प्रार्थी ने अपने सषपथ कथन में यह कहा है कि उसकी नियुक्ति वर्ष 1990 में पार्ट-टाईम सफाई कर्मचारी के रूप में बैंक ऑफ राजस्थान आदर्श नगर, शाखा में हुई थी। 13.08.2010 को राजस्थान बैंक ICICI बैंक में समाहित हो गई इस प्रकार वह अप्रार्थी सं. 2 के यहा भी 23 साल से लगातार कार्य कर रही है। प्रतिपरीक्षा में प्रार्थी का यह कथन है

कि उसे नियुक्ता ने कोई नियुक्ति पत्र नहीं दिया तथा 1990 से 12.08.2010 तक कार्य करने संबंधी कोई दस्तावेज उसने प्रस्तुत नहीं किया। उसे यह जानकारी नहीं है कि उसका P.F. का पैसा मै. आईरिस सर्विसेज द्वारा जमा किया जाता हो तथा यह भी ज्ञात नहीं है कि प्रदर्श **M- 1** प्रलेख में वर्णित तथ्य वास्तविक हैं या नहीं। वह स्वीकार करती है कि ICICI बैंक द्वारा कोई नियुक्ति पत्र उसे नहीं मिला है। उसे यह भी ज्ञात नहीं है कि ICICI बैंक ने सफाई का कार्य ठेके पर दे रखा हो।

16. इसके विपरीत विपक्षी साक्षी ललित मोहन शर्मा ने अपने साक्ष्य में यह कहा है कि प्रार्थी ICICI बैंक में बाहरी एजेन्सी मै. आईरिस सर्विसेज द्वारा साफ सफाई के कार्य हेतु अनुबंध के आधार पर विपक्षी बैंक की आदर्श नगर, शाखा में साफ सफाई करने आती है और प्रतिदिन उसका कार्य आधे घंटे का रहता है। साक्षी ने यह भी कहा कि प्रार्थी विपक्षी बैंक की कर्मचारी नहीं है। प्रार्थी के वेतन का भुगतान अनुबंधित फर्म आईरिस सर्विसेज के द्वारा ही किया जाता है। आईरिस सर्विसेज के द्वारा प्रार्थी के संबंध में बैंक को प्रस्तुत किया गया विवरण प्रदर्श **M- 1** है। इस प्रदर्श **M- 1** पत्र में विपक्षी के शाखा प्रबंधक को आईरिस सर्विसेज द्वारा 01.10.2013 को यह सूचित किया गया है कि प्रार्थी बबली देवी अप्रैल, 2011 से उनकी कर्मचारी है तथा विपक्षी की आदर्श नगर, शाखा में साफ सफाई का कार्य कर रही है। उसका सप्ताहिक कार्यकाल मात्र 3 घंटे है। प्रार्थी का वेतन विपक्षी की बैंक में संधारित बचत खाते में जमा किया जाता है। प्रार्थी का च.F./ E.S.I. अंशदान उनके द्वारा काटकर संबंधित प्राधिकारी के यहा जमा किया जाता है। यह महत्वपूर्ण है कि प्रार्थी द्वारा इन कथनों का कोई खंडन नहीं करते हुये, मात्र अनभिज्ञता व्यक्त की गई है। इसी कम में प्रदर्श **M- 2** प्रार्थी के मासिक वेतन का विवरण है जो अप्रैल, 2012 से सितम्बर, 2013 तक का है।
17. इसी संदर्भ में विपक्षी के साक्षी सुरिन्द्र सिंह शेखावत के कथन भी उपलब्ध हैं जो विपक्षी के कथनों को पुष्ट करते हैं। सुरिन्द्र सिंह का कथन है कि वे फेसेलिटी मैनेजर के पद पर आईरिस सर्विसेज में कार्यरत हैं। यह संस्थान मेन पॉवर सप्लाई करती है। विपक्षी बैंक के साथ भी आईरिस सर्विसेज कं. का एक अनुबंध Out Sourcing के आधार पर है। इसके अन्तर्गत कर्मचारी उपलब्ध करवाने का करार अप्रैल, 2011 में हुआ था जो प्रतिवर्ष नवीनीकरण हुआ, तथा वर्तमान में भी है। यह अनुबंध प्रदर्श **M- 3** है। इन तथ्यों के प्रमाण स्वरूप प्रदर्श **M- 4**, प्रदर्श **M- 5** एवं प्रदर्श **M- 6** प्रदर्शित किये गये हैं जिनका कोई खंडन प्रार्थी ने नहीं किया है। प्रतिपरीक्षा में भी यह साक्षी कहता है कि प्रार्थी अनुबंध के बाद 2011 से अब तक विपक्षी बैंक में कार्यरत है।
18. यहाँ यह उल्लेख किया जाना असंगत नहीं है कि उक्त मै. आईरिस सर्विसेज संस्थान को विवाद में पक्षकार नहीं बनाया गया है न ही प्रार्थी ने इस संबंध में अधिकरण से कोई निवेदन किया है। जबकि, विपक्षीगण के वादोत्तर दिनांक 19.01.2015 के पश्चात यह तथ्य औपचारिक रूप से प्रार्थी की जानकारी में आ चुका था। इस तथ्यात्मक परिदृश्य में यह स्पष्ट हो जाता है कि प्रार्थी पूर्व में दी बैंक ऑफ राजस्थान की आदर्श नगर, शाखा में साफ सफाई का कार्य करती थी तथा बैंक ऑफ राजस्थान के ICICI बैंक में विलय के उपरांत विपक्षी बैंक ने मै. आईरिस सर्विसेज मेन पॉवर सप्लायर से साफ सफाई हेतु कर्मचारी उपलब्ध करवाने के लिये एक अनुबंध किया जो प्रदर्श **M- 3** है। इस अनुबंध के अन्तर्गत सेवा प्रदाता फर्म कर्मचारियों के चयन, नियुक्ति, कार्य सौंपने, पर्यवेक्षण एवं सतर्कता आदि दायित्वों के निर्वहन के लिये उत्तरदायी है। सेवा प्रदाता फर्म कर्मचारियों के वेतन/ परिलाभों के भुगतान एवं अनुशासनात्मक कार्यवाही के लिये भी दायित्वाधीन है। माननीय उच्च न्यायालय द्वारा International Airport Authority of India v/s International Cargo Workers Union के निर्णय में यह कहा है कि कर्मचारियों पर नियंत्रण और निर्देशन का दायित्व संवेदक पर है या प्रधान नियोजक पर, इन तथ्यों पर विचार कर ये प्रश्न उत्तरित करना होगा कि वेतन भुगतान कौन करता है एवं सेवा समाप्ति हेतु अनुशासनिक शक्ति किसे प्राप्त है। इस विनिश्चय के प्रकाश में प्रदर्श **M- 3** अनुबंध का परिशीलन यह दर्शाता है कि विपक्षी बैंक, सेवा प्रदाता मै. आईरिस सर्विसेज के किसी कर्मचारी के किसी भी प्रकार के भुगतान अथवा क्षतिपूर्ति हेतु उत्तरदायी नहीं होगी। विपक्षी बैंक और मै. आईरिस सर्विसेज के मध्य निष्पादित अनुबंध के आधार पर प्रार्थी एवं विपक्षी बैंक के मध्य नियुक्ता एवं कर्मकार के संबंध अस्तित्व में होना प्रमाणित नहीं होता है, वरन प्रार्थी अनुबंधित संस्थान मै. आईरिस सर्विसेज द्वारा नियुक्त कर्मकार प्रमाणित होती है। इस निष्कर्ष के उपरांत विचारणीय बिन्दु सं. 1 प्रार्थी के विरुद्ध तथा बिन्दु सं. 3 विपक्षी के पक्ष में निर्णीत किये जाते हैं।
19. विचारणीय बिन्दु सं. 2
20. इस बिन्दु के संबंध में प्रार्थी ने अपने साक्ष्य में यह कहा है कि उसके बाद वाले श्रमिकों को नियमित श्रमिक के रूप में विपक्षी ने नियुक्त कर दिया है जबकि वह उनसे पहले नियमित होने की योग्यता रखती है। इस प्रकार विपक्षी ने प्रार्थी के प्रति अनुचित श्रम- व्यवहार किया है। प्रार्थी जो काम करती है वह स्थाई प्रकृति का है।

21. इस संबंध में प्रथम तो यह उल्लेखनीय है कि प्रार्थी और विपक्षी के मध्य नियोक्ता और कर्मकार के संबंध उत्पन्न होना ही प्रमाणित नहीं हुआ है, दूसरे प्रार्थी ने अपने सम्पूर्ण कथन में यह वर्णित नहीं किया है कि उसके बाद वाले अर्थात् प्रार्थी से कनिष्ठतर कौन-कौन व्यक्ति है जिन्हें विपक्षी ने नियमित श्रमिक के रूप में नियुक्त किया है। प्रार्थी स्वयं तो विपक्षी बैंक द्वारा नियुक्त न होकर अनुबंधित सेवा प्रदाता फर्म मै. आईरिस सर्विसेज की कर्मकार होना प्रमाणित हुआ है। इसलिये विपक्षीगण पर प्रार्थी को नियमित नियुक्ति प्रदान करने का कोई दायित्व आरोपित नहीं किया जा सकता। विपक्षीगण द्वारा इस स्थिति में प्रार्थी के प्रति अनुचित श्रम व्यवहार किया जाना किसी प्रकार प्रमाणित नहीं हुआ है। इसलिये यह बिन्दु प्रार्थी के विरुद्ध निर्णीत किया जाता है।
22. **विचारणीय बिन्दु सं. 4**
23. प्रार्थी ने अपने दावे के अभिकथन के पैरा-7 में यह कहा है कि "प्रार्थी का नियमित करने का विवाद" श्रीमान के समक्ष औद्योगिक विवाद अधिनियम की धारा 2 A संशोधित अधिसूचना दिनांक 15.09.2010 के तहत प्रस्तुत किया जा रहा है।
24. विपक्षी का यह तर्क है कि प्रार्थी द्वारा प्रस्तुत क्लेम अधिनियम की धारा 2 (k) के अन्तर्गत औद्योगिक विवाद की परिभाषा में नहीं आता क्योंकि विपक्षी संस्थान के कर्मकारों की सारवान संख्या ने प्रार्थी के विवाद को उठाने हेतु कोई सभा आयोजित कर अथवा प्रस्ताव पारित कर किसी श्रमिक संघ को अधिकृत नहीं किया है। अधिनियम की धारा 2 A के अन्तर्गत प्रार्थी विवाद तभी प्रस्तुत कर सकती है जब ऐसा विवाद प्रार्थी की सेवा समाप्ति/उन्मोचित/छंटनी से संबंधित हो। विपक्षी बैंक में तो कोई मान्यता प्राप्त श्रमिक यूनियन भी नहीं है। प्रार्थी अपनी प्रति परीक्षा में स्वीकार करती है कि उसने जो दावा पेश किया है वह व्यक्तिगत रूप से पेश किया है, दावा पेश करने के संबंध में यूनियन के संबंध में कोई पत्र प्रस्तुत नहीं किया है, न ही यूनियन ने उसका विवाद उठाने के लिये कोई प्रस्ताव पारित किया था।
25. इन कथनों के विवेचन से यह स्पष्ट है कि अधिनियम की धारा 2 A के प्रावधान 15.09.2010 से प्रवर्तित हुये हैं तथा इस प्रावधान द्वारा मात्र ऐसे कर्मकार को जिसकी सेवा का समापन/ उन्मोचन/पदच्युति या छंटनी के माध्यम से किया गया हो। समझौता अधिकारी को प्रस्तुत आवेदन के 45 दिन उपरांत तथा सेवा समाप्ति के 3 वर्ष की समाप्ति के पूर्व श्रम न्यायालय के समक्ष सीधा आवेदन करने हेतु समर्थ बनाया गया है। इस प्रावधान के अनुसार सेवा समाप्ति से संबंधित विवाद के अतिरिक्त किसी अन्य विवाद को कर्मकार सीधे ही श्रम न्यायालय के समक्ष प्रस्तुत नहीं कर सकता है। यहाँ यह तथ्य विवादित नहीं है कि प्रार्थी ने स्वयं भी सेवा समाप्ति अथवा छंटनी से संबंधित विवाद प्रस्तुत नहीं किया है। इसलिये अधिनियम की धारा 2 A के अन्तर्गत प्रार्थी व्यक्तिगत रूप से यह विवाद प्रस्तुत करने हेतु सक्षम नहीं है।
26. अब विपक्षी की इस आपत्ति पर विचार किया जाना अपेक्षित है कि अधिनियम की धारा 2 (k) के अन्तर्गत यह विवाद औद्योगिक विवाद नहीं है। प्रार्थी ने स्वयं यह स्वीकार किया है कि उसने व्यक्तिगत रूप से अपना विवाद प्रस्तुत किया है एवं यूनियन की तरफ से इस संबंध में कोई समर्थन प्राप्त नहीं है।
27. माननीय दिल्ली उच्च न्यायालय ने अपने निर्णय *Management of Messers Hotel Samrat v/s Government of N.C.T. and others* में यह स्पष्ट अधिमत व्यक्त किया है कि एक व्यक्तिगत विवाद को न्याय निर्णयन हेतु संदर्भित करवाने के लिये एक कर्मकार को यह दर्शाना होगा कि उसके विवाद को कर्मकारों के एक संघ द्वारा समर्थन दिया गया है या प्रयोजित किया गया है। किसी कर्मकार का विवाद सामूहिक रूप से श्रमिक संघ के कार्यकारी निकाय द्वारा इस संबंध में एक विनिश्चय करके उठाया जा सकता है। कार्यकारी निकाय का कोई एक सदस्य समग्र संघ का चरित्र नहीं बन सकता है तथा संघ का गठन नहीं करता। इस निर्णय में प्रतिपादित विधि के प्रकाश में चूकिं प्रार्थी के विवाद को (जो कि सेवा समापन/छंटनी से संबंधित नहीं है) किसी श्रमिक यूनियन द्वारा अथवा बहुसंख्यक कर्मकारों द्वारा प्रस्ताव पारित कर समर्थित नहीं किया गया है, अधिनियम की धारा 2 (k) के अन्तर्गत औद्योगिक विवाद नहीं माना जा सकता है। इसलिये इस विवाद को जो कि एक व्यक्तिगत विवाद है तथा किसी श्रमिक संघ द्वारा प्रयोजित भी नहीं है, समुचित सरकार द्वारा न्याय निर्णयन हेतु इस अधिकरण को प्रेषित करना विधि सम्मत नहीं है। माननीय राजस्थान उच्च न्यायालय द्वारा श्रीमती बबली देवी बनाम बैंक ऑफ राजस्थान व अन्य में रिट याचिका पर पारित आदेश दिनांक 02.09.2009 में यह अधिनिर्णीत नहीं किया गया है कि प्रार्थी के वैयक्तिक विवाद को किसी श्रम संघ द्वारा समर्थित किये बिना भी औद्योगिक विवाद माना जाकर न्याय निर्णीत किया जावे। अतः यह बिन्दु विपक्षीगण के विरुद्ध निर्णीत किया जाता है।

28. अनुतोष:

29. उपयुक्त विचारणीय बिन्दु सं. (1) व (2) प्रार्थी के विरुद्ध एवं विचारणीय बिन्दु सं. (3) व (4) विपक्षीगण के पक्ष में विनिष्पत्ति होने पर यह स्पष्ट है कि प्रार्थी व विपक्षीगण के बीच कर्मकार एवं नियोजक का संबंध नहीं है तथा प्रार्थी के संबंध में केन्द्र सरकार द्वारा संदर्भित वैयक्तिक विवाद किसी श्रमिक संघ द्वारा समर्थित/प्रयोजित न होने के कारण इस अधिकरण द्वारा न्याय निर्णयन योग्य भी नहीं है। इस लिये प्रार्थी विपक्षीगण से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

30. केन्द्र सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।

31. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1421.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय नमूना सर्वेक्षण कार्यालय, डाटा प्रोसेसिंग प्रभाग, के प्रबंधन के संबंधित नियोजकों और श्री मदन दास, श्री रेननुल हाक और श्री उज्ज्वल भट्टाचार्य, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, कोलकाता, पंचाट (संदर्भ संख्या **REF. NO. 18 OF 2018**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2024 को प्राप्त हुआ था।

[सं. एल-42025-07-2024-124-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th July, 2024

S.O. 1421.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18 OF 2018) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **National Sample Survey Office, Data Processing Division, and Shri Madan Das, Shri Renanul Haque and Shri Ujjal Bhattacharjee, Worker**, which was received along with soft copy of the award by the Central Government on 11.07.2024.

[No. L-42025-07-2024-124-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

CGIT-18 OF 2018

Sri Madan Das, Sri Renanul Haque and Sri Ujjal BhattacharjeeApplicant/Employee

Versus

National Sample Survey Office, Data Processing Division. ... Opp. Parties

Appearance :

On behalf of the Applicants : In persons.

On behalf of Opp. Party : Mr. Saurabh Kr. Dubey, Authorised Representative.

Date: 01st February, 2024

A W A R D

This is the case under section 2A(2) of Industrial Dispute Act, 1947 filed by Sri Madan Das, Sri Rezanul Haque and Sri Ujjal Bhattacharjee (since deceased and substituted by legal heirs) through Vice President of All Bengal Security and Allied Workmen's Union for reinstatement of their services with full back wages.

It is the case of the workmen/union, they were engaged by National Sample Survey Office, Data Processing, Kolkata through M/s. Panther Security Services, M/s. Inter State Security Agency and lastly through M/s., Command Security Service, all sham and bogus contractors. They have rendered their services to the office of the National Sample Survey Office, Data Processing Division, Kolkata since 1st March, 2010 till their payment of salary was stopped from the month of January, 2017 and which they alleged to be termination of their service.

They have also alleged, all those three contractors through whom they were engaged by National Sample Survey Office, Data Processing Division, Kolkata were sham and bogus contractors. Thereby, National Sample Survey Office, Data Processing Division, Kolkata has indulged in unfair labour practice. Therefore, they have prayed for their reinstatement with back wages.

National Sample Survey Office, Data Processing Division, Kolkata have contested the case by filing written statement, where it has categorically stated that it never engaged those three workmen as security guards rather it had/has outsourced the job of security guards to private contractors through tender process as per the Govt. guidelines. That those three workmen were the employees by M/s. Panther Security Service who provided security services to its guest house from 2010 to 2014. That those three security guards continued to work under another security agency named M/s. Inter State Security Agency from 2014 to 2016. That from January, 2017 M/s. Command Security Service has been providing security guards to its establishment. That M/s. Command Security Service did not engage those three workmen with the termination of the contract with M/s. Inter State Security Agency and the services of those three contractor employees had come to an end.

It has alleged those workmen not being the employees engaged by National Sample Survey Office, Data Processing Division, Kolkata directly, question of their termination by National Sample Survey Office, Data Processing Division, Kolkata does not arise and alleged the relief sought by those three workmen against it is not maintainable and pray for dismissal of the same.

The record shows that contractor M/s. Command Security Service has failed to put appearance and contest the case and as such present proceeding has been proceeding ex parte against it.

The record shows the workmen/union has examined Sri Mani Dey, the representative/President of the union as W.W. No.1. They have also filed evidence in chief on affidavit of Sri Rezanul Haque, but failed to examine him. Therefore, evidence in chief on affidavit of Sri Rezanul Haque dated 21-11-2022 stands rejected.

Documents filed by the union have been marked as Exhibit –W-1 to Exhibit-W-8 on formal proof being dispensed with as per the order dated 19-07-2019 and which are as follows:-

- 1) copy of union's letters dated 20-01-2017 and 31-01-2017 addressed to the Manager, M/s. Command Security Service,
- 2) copy of letter addressed to ALC-Central dated 17-02-2017,
- 3) office memorandum issued by Ministry of Statistics and Programme Implementation dated 29-08-2017,
- 4) record of the proceeding before the ALC-Central, Kolkata in Case No.5/12/2017,
- 5) certificate issued u/s 2A of the Industrial Dispute Act by the ALC-Central, Kolkata, copy of representation dated 09-04-2018 written by Sri Madan Das, Sri Rezanul Haque and Sri Ujjal Bhattacharjee before the Additional Director General, Data Processing Division, Head Quarter, Kolkata.

On the other hand the authorities of National Sample Survey Office, Data Processing, Kolkata have failed to adduce any evidence or produced any documentary evidence.

The question arises whether a dispute u/s 2A of the Industrial Dispute Act, 1947 can be raised by Union?

Section 2A does not declare all individual dispute to be industrial dispute, but only in respect of a dispute connected with discharged, dismissed, retrenched or termination of a workman and such dispute can be raised by an individual workman if it is not sponsored by the majority of the workmen or by the trade union, but it does not prohibit body of workman or the union to raise a dispute concerned the discharged, dismissed, retrenched and termination of a workman. Therefore, this Tribunal holds that the union is justified in raising the present dispute u/s 2A of the Act of 1947 in respect of the alleged termination.

Second question that needs to be decided is whether the concerned workmen were the employees of National Sample Survey Office, Data Processing Division, Kolkata?

It is admitted by the union in its written claim statement that those three workmen were engaged to work as security guards in the establishment of National Sample Survey Office, Data Processing Division, Kolkata by one M/s. Panther Security Services. That said fact has been corroborated by Sri Mani Das, President of the Union, in his cross examination and stated those three concerned workmen were working for National Sample Survey Office, Data Processing Division, Kolkata on behalf of security services agency for more than 10 years. The contractors/security

services agency used to pay wages to those three persons. That he never saw any appointment letter issued by National Sample Survey Office, Data Processing Division, Kolkata to those three persons. That after the termination of those three persons he contacted the newly appointed security service provider and also approached it for reinstatement of those three workmen. That he never came across any letter of termination issued by National Sample Survey Office, Data Processing Division, Kolkata terminating the services of the concerned three security guards.

Such admission made by W.W. No.1, the representative of the three workmen and the President of the Union before the Tribunal under oath leaves no room for doubt that those three concerned workmen were the employees of the service provider or the agency engaged by National Sample Survey Office, Data Processing Division, Kolkata on contract basis. Such admission also proves the fact that National Sample Survey Office, Data Processing Division, Kolkata had outsourced the security job to private contractors through tender process. Those private contractors whose bid was accepted used to supply required number of security guards to the establishment of National Sample Survey Office, Data Processing Division, Kolkata.

It has been admitted by the principal employer that it had engaged M/s. Panther Security Service for the period from 2010 to 2014 and which had deputed those three security guards along with other security guards to its establishment. After the expiry of the contract with M/s. Panther Security Service another contractor named M/s. Inter State Security Agency was given the contract and who provided security guards to its establishment from 2014 to 2016. That M/s. Inter State Security Agency engaged those three security guards and deputed them to work in its establishment as security guards. That on expiry of the contract with M/s. Inter State Security Agency in the month of December, 2016 another service provider M/s. Command Security Service was engaged. That M/s. Command Security Service did not engage those three security guards of M/s. Inter State Security Agency and deputed its own new set of security guards.

It is true that National Sample Survey Office, Data Processing Division, Kolkata did not exhibit or examine any witness, but the documents which it has filed prima facie show that it had outsourced the job of security guards to private service provider by virtue of tender and by accepting the lowest bidder. It is also seen that initially the contract was executed between the principal employer and the contractor for a period of one year and it was renewed from time to time. The attendance register produced by the union prove the attendance of those security guards was maintained by the contractor M/s. Panther Security Service, their employer and not by the principal employer.

Exhibit-3, a letter to the ALC-Central by the Union, shows that the service of those three security guards were not taken into consideration by M/s. Command Security Service as they had already attend the age of 50 years and still the union insisted to take those three persons who have already attend the age of 50 years in the service of the security guards and has raised an industrial dispute.

Thus, from such exhibited document it appears M/s. Command Security Service did not take the service of those three erstwhile security guards of previous contractor as they had already attended the age of 50 years. That as per terms and condition of contract executed between the principal employer and the contractor employer no person above the age of 50 years is eligible or fit for the post of security guard.

It further appears from exhibit that out of 8 security guards M/s. Command Security Service had taken the service of other five security guards earlier engaged by M/s. Inter State Security Agency and a presumption can be drawn as those five other security guards had not attend the age of 50 years.

Thus, from the above documents it is seen service of those three guards were not terminated rather their service as security guards in the establishment of National Sample Survey Office has come to an end on the expiry of the contract of their immediate contractor employer M/s. Inter State Security Agency on 31st December, 2016 and further being disqualified to work as security guards on attaining the age of 50 years. They being the employees of the contractor of National Sample Survey Office, Data Processing Division, Kolkata they cannot demand reinstatement in service from the principal employer with whom they had no employer-employee relationship. Further, they not being engaged by M/s. Command Security Service at any point of time to work in the establishment of National Sample Survey Office, Data Processing Division, Kolkata they cannot demand reinstatement in service of security guards from M/s. Command Security Service. If they feel aggrieved or considered to be terminated from the job of the security guard in the establishment of National Sample Survey Office on expiry of the contract between their the then employer M/s. Inter State Security Agency and National Sample Survey Office, their remedy lies with their immediate the then employer M/s. Inter State Security Agency to provide them job elsewhere and cannot demand reinstatement in the establishment of National Sample Survey Office with whom the contract of their immediate employer had expired. Surprisingly, they did not implead their such immediate employer as party to this case and did not seek any relief against it.

Further, National Sample Survey Office, Data Processing Division, Kolkata being a Govt. organisation it cannot absorb its contractor's employees against the post which does not exist as sanctioned post in the organisation. Even if there is a sanctioned post of security guard in the establishment of National Sample Survey Office, then appointment has to be made through Staff Selection Commission as National Sample Survey Office, Data Processing Division, Kolkata is a Central Govt. organisation or by following the prescribed recruitment rules and regulations.

Further, the union/workmen have failed to prove that contractors engaged by National Sample Survey Office, Kolkata for supply of security guards to its establishment is sham and bogus. In fact, evidence of W.W. No.1 and exhibited documents prove that National Sample Survey Office, Kolkata had and has been outsourced or outsourcing the security guards job to private agencies through tender process and their terms of contract was/is extended in view of terms and conditions contained in the agreement executed between them.

In view of the above this Tribunal holds the relief claimed by three contractor employees whose service have come to an end on the expiry of the contract of their the then employer with the principal employer is not maintainable against the principal employer and as well against a new contractor who never engaged them. Accordingly, the workmen are not entitled to get the relief of reinstatement with back wages as prayed for. Thus, CGIT-18 of 2018 is dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2024

का.आ. 1422.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, रिलायंस जियो इन्फोकॉम प्राइवेट लिमिटेड, धोबी तालाब, मुंबई; मानव संसाधन प्रमुख, स्ट्रेटेजिक मैनुपावर सॉल्यूशंस लिमिटेड, विजय नगर, इंदौर (म.प्र.); अध्यक्ष, शालीमार पार्क, भोपाल (म.प्र.), प्रबंधन के संबद्ध नियोजकों और श्री विनोद कुमार सिंह, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/101/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2024 को प्राप्त हुआ था।

[सं. एल - 40012/22/2017-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 11th July, 2024

S.O. 1422.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/101/2018) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Reliance Jio Infocom Pvt Ltd, Dhobi Talao, Mumbai; HR Head, Strategic Manpower Solutions Limited, Vijay Nagar, Indore (M.P.) ;The Chairperson, Shalimar Park, Bhopal (M.P.), and Shri Vinod Kumar Singh, Worker**, which was received along with soft copy of the award by the Central Government on 11.07.2024.

[No. L-40012/22/2017-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/101/2018

Present: P.K.Srivastava

H.J.S..(Retd)

Sh. Vinod Kumar Singh

S/o. Sh. LalBaksh Singh

Saman Bandh, Ukhari Tola, Shardapuram

GSS, Behind Christ Church School

Reewan (M.P.) - 486001

Workman

Vs

The Managing Director

Reliance Jio Infocom Pvt Ltd

3rd Floor, Court House, Lokmanya Tilak

Marg, Dhobi Talao, Mumbai-400002

HR Head

Strategic Manpower Solutions Limited

7th Floor, Metro Tower, A-Wing, AB Road

Vijay Nagar, Indore (M.P.) – 452010

The Chairperson

New Distinct Services, D-9, Kolar Road

Shalimar Park, Bhopal (M.P.)-462042

Management

(J U D G E M E N T)

(Passed on this 24th day of June-2024)

As per letter dated 12/12/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-40012/22/2017 IR (DU) dt. 12/12/2018. The dispute under reference relates to:

“Whether the action of the management of Reliance Jio Infocom Private Limited and their contractors Manpower Solutions Limited & New Distinct Services in terminating the services of workman Sh. Vinod Kumar Sing, who was working as Field Executive Officer from 09.09.2014 until date of termination i.e. 22.03.2016, is fair, legal & justified ? If so, to what benefits the workman is entitled to & to what extent ?”

After registering a case on the basis of the reference, notices were sent to the parties. Many speed post notices were sent to the workman on the address mention in the reference but were returned unserved with the endorsement that he was not found on the address. There is no provision in the Act or the Rules for publication of notices nor is any budget allotted for this. Notices were served on management no.-1, 2 & 3.

Only management no.-1 & 2 filed their written statement of defense. Management no.-3 i.e. New Distinct Services did not care to file their written statement of defense.

Since, there is no statement of claim filed by the workman, this Tribunal has no option except to answer the reference against the workman and the reference is answered accordingly. No order as to cost.

DATE:- 24/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 जुलाई, 2024

का.आ. 1423.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स भिलाई स्टील प्लांट, सेल के प्रबंधन के संबद्ध नियोजकों और भिलाई इस्पात कर्मचारी यूनियन के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर, पंचाट (रिफरेन्स न. 98/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.07.2024 को प्राप्त हुआ था।

[सं. एल - 26011/4/2018-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th July, 2024

S.O. 1423.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 98/2018**) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Bhilai Steel Plant, SAIL and Bhilai Ispat Karmachari Union** which was received along with soft copy of the award by the Central Government on 12.07.2024.

[No. L-26011/4/2018-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/98/2018

Present: P.K.Srivastava

H.J.S..(Retd)

The Dy. General Secretary,
Bhilai Ispat Karmachari Union,
2/C, Street-13, Sector-04, Bhilai Nagar,
District – Durg, Chhattisgarh – 490001

Workman

Versus

The Chief Executive Officer,
M/s Bhilai Steel Plant, SAIL,
Post – Bhilai, District – Durg,
Chhattisgarh - 490001

Management

A W A R D

(Passed on this 19th day of June-2024)

As per letter dated 29/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-26011/4/2018-IR(M) dt. 29/11/2018. The dispute under reference related to :-

“ Whether the action of the Management of Bhilai Steel Plant, Bhilai in arranging excess recovery of HBA i.r.o. Shri Malalng Pasa, Sr. Tech. (TEED-TSD) is proper, legal and justified? If not, what relief the workman represented through Bhilai Ispat Karmachari Union is entitled to? ”

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management filed its written statement of claim/defence.

Management has taken a case in their written statement of defence that the workman was granted home building advance of Rs. 1,74,000/- (Rupees One lakh seventy four thousand) on 31th October, 1996, which was released in this account. It was found that no house was build on the site for which the advance was granted. Prayer of the workman for change of site was refused, and recovery order were passed with regard to his building advance.

I have heard the argument of Management Counsel Adv. R.C. Srivastava and perused record. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 19/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 जुलाई, 2024

का.आ. 1424.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरपोर्ट अथॉरिटी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और इंडिया एयरपोर्ट कामगार यूनियन (इंटक) के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर, पंचाट (रिफरेन्स नं.-97/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.07.2024 को प्राप्त हुआ था।

[सं. एल - 11011/6/2012-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th July, 2024

S.O. 1424.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 97/2012**) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Airports Authority of India** and **Indian Airport Kamgar Union (INTUC)** which was received along with soft copy of the award by the Central Government on 12.07.2024.

[No. L-11011/6/2012-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/97/2012

Present: P.K.Srivastava

H.J.S..(Retd)

Shri G.A. Rudrappa

General Secretary,

Indian Airport Kamgar Union (INTUC)

Camp Office-B-11, DDA Janta Flat,

Kalkaji, New Delhi.

Workman

Versus

The Regional Executive Director,

Airports Authority of India

Eastern Region-NSCBI Airport, Kolkata

The Airport Director

AAI, Raipur Airport Mana

Raipur (CG).

Management

(J U D G E M E N T)

(Passed on this 14th day of June-2024)

As per letter dated 11/09/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-11011/6/2012/IR(M) dt. 11/09/2012. The dispute under reference relates to:

“(i). Whether the departmental inquiry conducted by the Inquiry Officer against the workman Shri M.R. Giripunje is fair, impartial and conforms to the principles of natural justice ? What relief the workman is entitled to ?

(ii). ***Whether the penalty of “Reduction to one stage lower in time scale of pay being drawn by him for a period of one year and the period of suspension from 23.3/2.4.2007 to 3.8.2009 not being treated as the period spent on duty” imposed on Shri M.R. Giripunje, Sr. Asstt. (Wireman) by the management of Airport Authority of India vide order No.- AAI/ER-Kol/DISC/MRG/486 dated 24/29.11.2010 and order No. AAI/ER-Kol/DISC/MRG/515 dated 25/1/2011 respectively is legal and justified ? What relief the workman is entitled to ?***

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and file their respective Statement of Claims and Defense.

According to the workman, he was served a charge sheet on 23.03.2007 under Regulation 29 of Airport Authority of India Employees (CDA) Regulations 2003, wherein it was alleged that he was indulged in assaulting Mr. Sanjay P. Oberoi and Pelting Stones on building as well fire vehicle on 04.03.2007. He was placed under suspension vide order dated 23.03.2007.

A departmental enquiry was conducted by management in which the workman was found guilty of the charges. He was awarded punishment of reduction to one stage lower in time scale of pay being drawn by him for a period of one year and the period of suspension not being treated as period spent on duty for the charges.

In the meanwhile he was convicted for the criminal charges U/S. 323/34 of I.P.C. after trial before Special Court.

The workman, in his statement of claim alleged that the enquiry was conducted against rules and principles of natural justice. The charges were not proved and also that the punishment was disproportionate to the charge. Hence, according to him the management committed illegality. He prayed that setting aside his punishment order, he be granted all back wages and benefits.

Rebutting the allegations of the workman, management has taken a case in their written statement of defense that a charge sheet under Regulation 29 of Airport Authority of India Employees (CDA) Regulations 2003, wherein it was alleged that he was indulged in assaulting Mr. Sanjay P. Oberoi and Pelting Stones on building as well fire vehicle on 04.03.2007. was issued by management for misconduct and after finding that his explanation was not satisfactory, management was decided to conduct an enquiry. The workman participated in the enquiry. The Enquiry Officer submitted his report holding the workman guilty of misconduct. This report was sent to the workman with show cause notice. After considering his representation on the enquiry report and show cause the Disciplinary Authority passed the punishment order of reduction to one stage lower in time scale of pay being drawn by him for a period of one year and the period of suspension not being treated as period spent on duty for the charges. Accordingly, the management has prayed that the reference be answered against the workman.

Following preliminary issue was framed as follows :-

1. *Whether the departmental enquiry conducted is legal and proper or not?*

Parties adduced their evidence on this preliminary issue the copy of enquiry papers was filed by management, admitted by workman.

Vide order dated 18.11.2019, preliminary issue was decided holding the departmental enquiry legal and proper. This order is part of this award.

Following additional issues were also framed on 18.11.2019:-

2. *Whether the alleged misconduct proved from the evidence in enquiry ?*

3. *Whether the punishment of reduction to one stage lower in time scale of pay being drawn by him for a period of one year and the period of suspension not being treated as period spent on duty for the charges is legal and justified ?*

4. *Relief to which the workman is entitled ?*

Parties were directed to file their evidence on these additional issues in form of documents/affidavit. The workman filed his affidavit and some documents with it, to be referred to as and when required. Management did not file any affidavit or document.

I have heard argument of learned Counsel Mr. Praveen Yadav for workman and learned Senior Counsel Mr. Anoop Nair, assisted by Mr. Neeraj Kewat for management. I have gone through the record and the written arguments.

Issue No.-2 :-

Learned Counsel for workman has submitted that the basis of the charge before the Criminal Court during trial and in the departmental enquiry was one and the same Learned Counsel has referred to different contradictions in

the statements of witnesses examined during the enquiry and before Court to buttress his argument that charges were wrongly held proved.

Learned Counsel has referred to judgment of Hon'ble Supreme Court in the case of **G.M. Tank vs. State of Gujarat (2006) 4 SCC 446, State Bank of Hyderabad Vs. P. Kata Rao (2008) 15 SCC 657 and Ramlal vs. State of Rajasthan AIR Online 2023 SC 1038** in this respect.

On the other hand, learned Senior Counsel has submitted that the standard of proof required for charge to be proved in a departmental enquiry is not the same as it is in a criminal trial. He further submits that the workman was convicted of the charges by Criminal Court after trial.

The settled proposition of law is that the charges need not be proved beyond reasonable doubt in a departmental enquiry. Following judgments are being referred to in this respect.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255

*Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, **there should be some evidence to prove the charge.** Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref: (i) **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10, 11, 12 & 13).** (ii) **M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

*In the cases of (i) **NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30,** it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

*In the case of **T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255,** it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

*In the cases of **Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425,** the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "*

In the cases referred to by the workman side the facts are found different from the case in hand. In the case of **Ramlal (Supra)** the charge against the employee was that he made alteration in his 8th Standard Marksheet in the date of birth column to project him a major at the time of his appointment. The Marksheet showed no such alteration rather

there was over writing in the application form which was held in advertent. In the other case of **G.M. Tank (Supra)** the employee was honorably acquitted from the charges by Criminal Court and not on the basis of reasonable doubt.

From perusal of statements of witnesses recorded during the enquiry, it is clear that the statements of witnesses fully support the charge as it has been found after perusal of enquiry papers, the argument of learned Counsel for the workman that the finding of the Enquiry Officer holding the charges proved was wrong cannot be accepted. It is also noticed that the workman was held guilty for offences under Section 323/34 of I.P.C. on the same set of evidence. Accordingly, holding the finding of the Enquiry Officer, the charges against the workman are held proved.

Issue no.-2 is answered accordingly.

Issue No.-3 :-

Learned Senior Counsel for management has submitted that discipline is the core value that has to be maintained by an employee while in service. No employer can afford to have an employee on its rolls who is indisciplined.

On the other hand learned Counsel for workman has submitted that the fact that the workman was released on probation after trial should have been taken into account by management in awarding the punishment and atleast the workman should not have been awarded harsh punishment.

The settled proposition of law is that the punishment can be interfered by this Tribunal only when it is so disproportionate to the charge that it shocks the conscience of this Tribunal. Following judgments are being referred to in this respect.

Hon'ble Apex Court in **B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof.”

In **DG, RPF vs. Sai Babu (2003) 4 SCC 331**, Hon'ble Apex Court has observed that:

“6..... Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works.”

In **United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.”

In **Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257** Hon'ble Supreme Court reiterated the legal position as follows:

“8. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

In *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

“The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad* (2010) 2 SCC (L&S) 101 has observed that

“The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

This extract is taken from *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

In *Air India Corporation Bombay vs. V.A. Ravellow* 1972 (25) FLR 319 (SC) it has been observed that:

“Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.”

In *Knhaiyalal Agarwal and others vs. Factory Manager, Gwalior Sugar Co. Ltd.* AIR 2001 SC 3645 Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

“Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved.”

No doubt an employee has to maintain absolute integrity and discipline while in service. There can be no compromise on these two core values of an employee in any institution. The fact that the workman was released on probation, loses its significance when the matter relates to internal discipline in an institution. Hence, in these circumstances, the punishment to the workman inspite of the fact that he was released on probation after trial cannot be faulted in law or fact. Holding the punishment justified in law.

Issue no.-3 is answered accordingly.

Issue No.-4 :

On the basis of findings recorded above, the workman is held entitled to no relief.

Accordingly, the Reference is answered as follows :-

A W A R D

The departmental inquiry conducted by the Inquiry Officer against the workman Shri M.R. Giripunje is fair, impartial and conforms to the principles of natural justice. The workman is entitled to no relief.

The penalty of "Reduction to one stage lower in time scale of pay being drawn by him for a period of one year and the period of suspension from 23.3/2.4.2007 to 3.8.2009 not being treated as the period spent on duty" imposed on Shri M.R. Giripunje, Sr. Asstt. (Wireman) by the management of Airport Authority of India vide order No.- AAI/ER-Kol/DISC/MRG/ respectively is legal and justified. The workman is entitled to no relief.

No order as to costs.

DATE:- 14/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 जुलाई, 2024

का.आ. 1425.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सहारा इंटरनेशनल एयरपोर्ट प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और श्री राजेश कुमार गुप्ता के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली, पंचाट (एलसीए न.-03/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.07.2024 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2024-आईआर (एम)-83]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th July, 2024

S.O. 1425.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (LCA No. 03/2017) of the **Central Government Industrial Tribunal cum Labour Court-2, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Sahara International Airport Private Limited** and **Shri Rajesh Kumar Gupta** which was received along with soft copy of the award by the Central Government on 12.07.2024.

[No. Z-16025/04/2024-IR (M)-83]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL-TRIBUNAL CUM-LABOUR COURT NO-II, NEW DELHI

LCA No. 03/2017

Sh. Rajesh Kumar Gupta,

R/o C-3/140,

Vikrant Khand, Gomti Nagar,

Lucknow, UP-226010,

Versus

1. Accountable Manager,
Sahara International Airport Pvt. Ltd.
Hotel Sahara Star,
Opp. Domestic Airport, Vile Parle (E).
2. CEO,
Sahara International Airport Pvt. Ltd.,
Hotel Sahara Star,

Opp. Domestic Airport, Vile Parle (E).

Mumbai-400099.

Counsels:

For Claimant: Kunal Awana & Pratik Gaur, Ld. AR

For Respondent: None

ORDER DATED:- 18.06.2024

This order shall dispose of the two applications filed by one **Sonal Jaiswal**. First one has been filed with the request that she be substituted in place of the deceased claimant in whose favor the award has been passed. She submits that Claimant Sh. Rajesh Gupta was expired leaving behind her as legal heir. Other one has been filed by the same applicant seeking modification in the award passed by the Ld. Predecessor of this court. His contention is that inadvertently in para no.-10 of the judgment word and figure Rs. 2,55,000/- has been typed instead of Rs. 21,55,000/- as mentioned in para no.-1. Hence being the numerical error it be corrected.

I have heard the applicant as well as gone through the record of this case. Claimant Rajesh Kumar Gupta has filed an application U/s 33C (2) of the I.D Act for recovery of the money dues from an employer. He claim to be appointed as a **Base Maintenance Manager** by the respondent company vide offer letter dated 22.09.2012. He was given gross salary of Rs. 2.60 Lakh per month + perks. He accepted the offer letter and joined the respondent Sahara International Airport Pvt. Ltd (SIAPL). After the arrest of **Mr Subroto Roy, Chief of Sahara** Group/respondent, there was a chaos in the management which led to the delay in payment of salary of employees. His salary was not paid, hence he filed the claim.

Respondent was proceeded ex-parte. Ex-parte award vide order dated 17.09.2019 was passed in favor of applicant by the Ld. Predecessor of this court whereby the respondent was held liable to pay an amount of Rs. 2,55,000/ along with interest @ 6% per annum from the date of accrual of the dues till actual payment is made.

Now come to an application filed by the claimant. In the first application, applicant claims to be the legal heir of the claimant being the legally wedded wife submitting that the claimant was expired after passing of the award. Along with the application, copy of the death certificate of the claimant was annexed wherein Rajesh Kumar Gupta was shown as expired on 17.05.2021. Photocopy of Aadhaar Card of the applicant has also been annexed to buttress the fact that the applicant is the wife of the claimant.

In view of the above said fact herein, this application stands allowed. In the award dated 17.09.2019, name of the applicant be substituted in place of claimant Sh. Rajesh Gupta, as Sonal Jaiswal R/o C-3/140, Vikrant Khand, Gomti Nagar, Lucknow, U.P- 226010.

Now, I have come to another application filed by the same applicant. By moving this application, applicant want to modify the award dated 17.09.2019. He submits that inadvertently numerical error have been erupted in para no.-10 of the said award where the amount had been mentioned as Rs. 2,55,000/- instead of Rs. 21,55,000/-. He submits that in para no.-1, it has been mentioned that the claimant has been claiming an amount of Rs. 21,55,000/-.

I have heard the argument and perused the record of this award. In the entire award passed by the predecessor of this court, nowhere it has been mentioned that any deduction have been made towards the claim filed by the claimant towards any error in calculation. Rather than it is an ex-parte award passed by the Ld. Predecessor of this tribunal.

Considering the above facts, it appears that in para no. 10 numerical error have been erupted. Therefore, the word and figure Rs. 2,55,000/- in para no.10 be read as Rs. 21,55,000/-. A copy of this order is sent to the appropriate government U/s 17, for annexing this order in the award passed by the Ld. Predecessor of this tribunal on 17.09.2019. For ready reference copy of the award passed by Ld. Predecessor of this court be also attached. Ordered accordingly.

Date 18.06.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 12 जुलाई, 2024

का.आ. 1426.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बजाज आलियांज लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और श्री राजीव कुमार मैती के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स न. **32/2013**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.07.2024 को प्राप्त हुआ था।

[सं. एल - 17012/11/2013-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 12th July, 2024

S.O. 1426.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 32/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Bajaj Allianz Life Insurance Company Limited** and **Sri Rajib Kumar Maity** which was received along with soft copy of the award by the Central Government on 12.07.2024.

[No. L-17012/11/2013-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA****Present: Justice K. D. Bhutia, Presiding Officer.****REF. NO. 32 OF 2013****Parties:** Employers in relation to the management of**M/s. Bajaj Allianz Life Insurance Company Ltd.****Versus****Sri Rajib Kumar Maity**

Appearance:

On behalf of the M/s. Bajaj Allianz Life Insurance Co.: Mr. Dipak Ranjan Mukherjee, Ld. Advocate.

On behalf of the Sri Rajib Kumar Maity: Mr. Susanta Pal, Ld. Advocate.

Dated: 28th June, 2024**A W A R D**

Govt. of India, Ministry of Labour vide Order No. L-17012/11/2013-

(IR (M)) dated 14-06-2013 in exercise of the power conferred under section 10(1)(d) and sub-section (2A) of the Industrial Dispute Act, 1947 has referred the following dispute to this Tribunal for adjudication.

“Whether the action of the management of M/s. Bajaj Allianz Life Insurance Company Ltd., in terminating the services of Shri Rajib Kumar Maity working as Jr. Sales Manager in the Tamluk Branch invoking the termination clause of his appointment letter, w.e.f. 09-02-2012, is justified? If not, what relief Shri Maity is entitled to?”

The facts giving rise to the present dispute in gist are that Sri Rajib Kumar Maity was appointed as a Jr. Sales Manager on 21-09-2006 and was posted at Tamluk Branch of M/s. Bajaj Allianz Life Insurance Company Ltd.. That from the day he joined Tamluk Branch he was eyesore of Branch Manager Sri Hare Krishna Chowdhury and who for no reason used to humiliate him now and then in presence of other member staff and outsiders. That he was never informed in advance about the meetings to be attended by him by said Sri Hare Krishna Chowdhury and due to which he was unable to attend official meetings in time and on the schedule dates.

Further he has alleged that he used to discharge the duty of a workman though he was designated as Jr. Sales Manager having no administrative responsibility. That he being a Jr. Sales Manager had no authority to take any action against his subordinate or had no authority to grant leave to those subordinates. In fact he used to discharge the duty as directed by the superior officials and used to carry out the orders of the superiors.

That without giving any opportunity of being heard or any show cause notice he has been terminated from the service by the management of M/s. Bajaj Allianz Life Insurance Co. by issuing a letter dt.09-02-2012. Therefore, he has alleged the action of the management of M/s. Bajaj Allianz Life Insurance Co in terminating his service is illegal, unjust and thereby prayed for reinstatement with back wages.

Further, Sri Rajib Kumar Maity in his rejoinder has alleged that his power to recruit Insurance Certified Consultants was subject to supervision of his superiors. That all decisions taken by him was dependent upon the decision and approval of his seniors. That he was empowered to recruit some voluntary Insurance Certified Consultant on commission basis to give emolument of pecuniary target of the company subject to approval of the

Branches Supremo. Acceptance or non-acceptance of recruitment of Insurance Certified Consultant was totally controlled by the Branches Supremo. That he had no power to take any individual decision.

The management of M/s. Bajaj Allianz Life Insurance Co by filing written reply contested the claim and case of the workman and alleged that the reference is not maintainable as Sri Rajib Kumar Maity was/is not a workman as defined in section 2(s) of the I.D. Act, rather he at the time of his termination was holding the post of Business Development Manager. That Sri Rajib Kumar Maity joined as a Junior Sales Manager on 21-09-2006 and he was promoted to Sr. Sales Manager in 2009. That at the time of his termination he was holding the post of Business Development Manager.

That Sri Rajib Kumar Maity being a Manager, was responsible to develop insurance business amongst its business partners and customers by selling the insurance policies of the company and had power to bind the management by his own independent decision. That Sri Maity was managing a team of Insurance Certified Consultant who were recruited by him on behalf of the management. Those persons recruited as Insurance Certified Consultant used to work under him and had power to take decision on their behalf. That Sri Maity was responsible to obtain regular business progression report on day to day basis from the Insurance Consultants appointed by him. That Insurance Certified Consultants used to report him and used to do business by login through the Business Code of Sri Maity. Thus Sri Maity used to discharge managerial and administrative duties.

That Sri Maity was terminated from the service by invoking the provision of his appointment letter dt. 21-09-2006 by giving him notice pay of one month. M/s. Bajaj Allianz Life Insurance Co had paid all the dues and salary of Sri Rajib Kumar Maity till the last working day. It has also alleged that Sri Maity has brought false allegations against Sri Hare Krishna Chowdhury, Branch Manager for the purpose of this case. Therefore, it has prayed for dismissal of the reference.

The workman in order to prove his case and claim has examined himself as W.W.1. The order sheet dated 11-08-2014 shows the documents filed by the workman has been marked as Exb. W-1 to W-23 on formal proof being dispensed with.

Ld. Counsel for the workman has placed reliance on S. K. Verma –vs- Mahesh Chandra & Anrs. (1983) 4 SCC 214.

On the other hand the management has examined Sri Subhamay Sinha, Regional Human Resource Manager as M.W.1 and through him management has exhibited following documents :-

1. Copy of promotion letter dt.20-07-2007 of Sri Rajib Kumar Maity as Exb.M-1.
2. Copy of another promotion letter of Sri Rajib Kumar Maity dt.20-05-2008 as Exb. M-1/A.
3. Copy of another promotion letter of Sri Rajib Kumar Maity dt.01-09-2008 as Exb.M-1/B and
4. Copy of termination letter of Sri Rajib Kumar Maity dt.09-02-2012 as Exb. M-2.

The management has filed written notes of argument and placed reliance on the following decisions:-

1. Chauharya Tripathi & Ors. –vs- Life Insurance Copn. Of India & Ors. (2015) 7 SCC 263.
2. Mukesh K. Tripathi –vs- Sr. Divisional Manager, Life Insurance Copn. Of India, reported in (2004) 8 SCC 387.

Ld. Counsel for the management at the very outset has submitted that the present case is not maintainable as Sri Rajib Kumar Maity was/is not a workman as defined in section 2(s) of the Industrial Disputes Act. He being the Business Development Manager and drawing salary more than Rs.32,000/- at the time of his termination does not fall within the category of a workman.

On the other hand Ld. Counsel for the alleged workman submitted designation and quantum of wages is not the criteria to determine whether the applicant was holding a managerial post or not. The only factor which determines whether the applicant falls within the definition of workman is the actual nature of job performed by him in the establishment of the company at the time of termination.

Since the management in its written statement has raised an issue that the Sri Rajib Kumar Maity being Business Development Manager is not a workman, therefore, it becomes necessary to decide whether Sri Rajib Kumar Maity is a workman as provided under section 2(s) of the I.D. Act or not. In case Sri Rajib Kumar Maity is held not to be a workman as defined in section 2(s) of the Industrial Disputes Act, then this Tribunal lacks jurisdiction to adjudicate the dispute under reference.

The term “workman” is defined u/s 2(s) as follows:-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes

any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ⁵⁹[ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Therefore, as per section 2(s) workman is any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operation, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose, dismissal, discharge or retrenchment has led to that dispute.

The term “workman” has been interpreted by the Courts and held to determine whether a person is a workman or not certain factors need to be considered such as if a person performs multifarious functions, the nature of the main function performed by the person has to be considered to determine if the person is a workman or not. The designation, source of employment, method of recruitment, terms and condition of employment, quantum of wages/pay and the mode of payment should not be considered while determining whether a person can be termed as workman. A person working in purely managerial or supervisory capacity does not fall within the definition of the workman under I.D. Act., the employer has to prove that his work and duties were in nature of a manager.

Exhibit-W-1 prima facie shows that Sri Rajib Kumar Maity was selected as a Junior Sales Manager on 21-09-2006 and was directed to join the said post at of M/s. Bajaj Allianz Life Insurance Co. Ltd., Tamluk Branch. Exb. W-1 also contains the terms and conditions of the service of Sri Rajib Kumar Maity selected as a Jr. Sales Manager.

Exhibit-M-1 shows that Sri Rajib Kumar Maity was promoted to next grade from Jr. Sales Manager to Assistant Sales Manager grade w.e.f. 01-10-2007 on the same terms and conditions of service but with revised compensation.

Exb. M-1/A shows that he was further promoted to next grade considering his business performance as Sales Manager grade w.e.f. 01-04-2008 on the same terms and conditions of service but with revised compensation.

Exb.M-1/B dt. 01-09-2008 shows he was promoted as Business Development Manager in STM Grade w.e.f. 01-04-2008 on the same terms and conditions of service but with revised compensation.

Sri Rajib Kumar Maity in his evidence recorded under oath on 11-12-2014 has stated that duty of Business Development Manager and Sales Manager are same but at the same time he has admitted his salary as a Jr. Sales Manager was Rs.12,000/- and as a Business Development Manager his salary was Rs.32,000/- per month. His own such statement discredit what he has stated that duty of Business Development Manager and Sales Manager are same.

He has also stated as a Jr. Sales Manager he was entrusted to engage agents/Insurance Consultants but he at the same time stated that he does not remember how many agents and Insurance Consultants he had engaged. However, he has admitted that Insurance Consultant who were appointed by him used to work under his supervision. That he used to ask Insurance Consultant to assure and encourage customers to get insured. He has further admitted in the year 2008 he was given promotion twice and he was promoted as a Business Development Manager. He has also admitted that he did not disclose working as a Business Development Manager at the time of termination before the Labour Commissioner, where he had raised an Industrial Dispute.

On the other hand M.W.1 in his evidence in chief on affidavit has categorically stated that as a Manager Sri Maity was responsible to develop insurance business amongst its business partners and customers as per scope of work i.e. as per duties and obligations mentioned in the appointment letter of the Business Development Manager of the company. He was to recruit Insurance Consultant using his discretion and was responsible to obtain regular business, progress reports on a day to day basis. The Insurance Consultants engaged by him used to report to him and used to do business by logging through the business code of Sri Maity. That management decided to remove Sri Maity from the service due to his poor performance from November, 2011 to January, 2012 and his failure to improve his performance.

During cross examination he has further reiterated that the main work of Business Development Manager is to sale and promote the insurance products of the company through his team recruited by himself. He was also responsible to develop the work of his team by giving them training, participating with them in joint calls and to

encourage the team by giving incentives. His responsibility was to control and manage his entire team/agents. Mr. Maity was not the appointing authority of the team or agents working under him. He merely recruit them as agents of the company.

That Business Development Manager has power to keep agents as many as he wants. He has power to grant leave to his agents or any member of his team. He has discretion whether to give or not to give any kind of work to any member of his team. The agents are not the employees of the company as they work on commission as financial advisor. That agents /financial adviser are sales team of Business Development Manager. Business Development Manager is an employee of the company and he is paid salary but agents are paid commission calculated on the basis of the sales of the insurance policies. The attendance of agents is maintained by Business Development Manager. Agents are paid incentive and foreign trips depending on the volume of business done by them. Business target is fixed by the management i.e. by Zonal Manager and Head of the Department which is to be achieved quarterly, half yearly and yearly. He had to discharge duty as per key responsibilities area.

Further, he has admitted that Sri Rajib Kumar Maity was terminated from the service invoking the clause contained in his appointment letter and without holding any domestic enquiry or without framing any charges against him.

Ld. Counsels for the parties have placed reliance on those judgments where the issue of termination of Development Officer of LIC or Development Officer on apprentice were involved.

No doubt in S. K. Verma (supra) relied upon by Ld. Counsel for Sri Rajib Kumar Maity, Hon'ble Supreme Court has been pleased to hold Development Officer of LIC to be a workman, but said judgment has been held to be 'par incuriam' by Hon'ble Supreme Court in Chaucharya Tripathi & Ors. (supra) and in the said decision Development Officer working in LIC are held not to be workmen under section 2(s) of the I.D. Act.

In the present case Sri Rajib Kumar Maity was a Business Development Manager of a private insurance company, but admittedly the nature of work discharged by him shows, his duty was similar to those engaged as Development Officer in LIC. Admittedly, he was engaged in sales promotion job of M/s. Bajaj Allianz Life Insurance Co. Ltd. He was also responsible to recruit agents/ Insurance Consultants of his choice and who can promote and develop the business of the company by giving them training, participating with them in joint calls, to encourage the team by giving incentives and develop the work of his team by suggesting and guiding them, the ways and means to improve sales. His responsibility was to control and manage his entire team/agents. He being Business Development Manager, primarily employed to do canvassing and promoting sales of the company and having supervisory duty over the agents recruited by him for development, improvement and promotion of business of the company, his job needs a study of the type of the public to whom the product has to reach and a study of the market condition. So, it appears the job for which he was appointed requires imaginative and creative mind and which cannot be termed as either manual, skilled, unskilled or clerical in nature.

In view of the above, this Tribunal holds Sri Rajib Kumar Maity is not a workman as defined in section 2(s) of the I. D. Act, but a person entrusted to develop the business of the company with power to recruit agents/ Insurance Consultants to promote sales of the company. Therefore, the present case is not maintainable. More so, the order of reference discloses Sri Rajib Kumar Maity as Jr. Sales Manager and not Business Development Manager, the post which he was holding at the time of his termination on 09-02-2012.

Accordingly Reference No. 32 of 2013 is dismissed and award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 16 जुलाई, 2024

का.आ. 1427.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सचिव, भारत सरकार, संचार एवं प्रौद्योगिकी मंत्रालय, डाक विभाग, नई दिल्ली; निदेशक, डाक सेवाएं, हरियाणा परिमंडल, अंबाला; अधीक्षक, रेलवे मेल सेवा, मानव संसाधन प्रभाग, अंबाला छावनी; प्रधान अभिलेख अधिकारी, आरएमएस "एचआर" डीएन, अंबाला, के प्रबंधन के संबंध में नियोजकों और श्री सतीश कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-1, चंडीगढ़, पंचाट(संदर्भ संख्या 183/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.07.2024 को प्राप्त हुआ था।

[सं. एल - 40012/142/2013-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 16th July, 2024

S.O. 1427.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 183/2013) of the **Central Government Industrial Tribunal cum**

Labour Court -1, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary to Government of India, Ministry of Communication and Technology, Department of Posts, New Delhi; The Director, Postal Services, Haryana Circle, Ambala; The Superintendent, Railway Mail Service, HR Division, Ambala Cantt; Head Record Officer, RMS "HR" DN, Ambala, and Shri Satish Kumar, Worker**, which was received along with soft copy of the award by the Central Government on 12.07.2024.

[No. L-40012/142/2013-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE**In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh.****Present: Mr. Kamal Kant, Presiding Officer.**

ID No.183/2013

Registered on:-4.3.2014

Sh. Satish Kumar S/o Sh. Rameshwar Dass, R/o Village Rajouli, Post Office Badhouli, Distt. Ambala(Haryana).

Workman

Versus

1. Union of India through Secretary to Government of India, Ministry of Communication and Technology, Department of Posts, New Delhi.
2. Director Postal Services, Haryana Circle, Ambala.
3. Superintendent, Railway Mail Service, HR Division, Ambala Cantt.-133001.
4. Head Record Officer, RMS "HR" DN, Ambala-133001. Respondents/Management

AWARD**Passed on:-11.06.2024**

Central Government vide Notification No.L-40012/142/2013-IR(DU), Dated 17.02.2014, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management in termination of services of workman in dispute w.e.f. 21.07.2011 and demand of Shri Satish Kumar S/o Shri Rameshwar Dass, Ex-Part time chowkidar for reinstatement and regularization in services with full back wages with the management of (i) The Director, Postal Services, Haryana Circle, Ambala & (ii) The Superintendent, Railway Mail Service, HR Division, Ambala Cantt., Haryana is just, fair and legal? If not, to what relief the workman concern is entitled to & from what date?"

1. Both the parties were put to notice and claimant/workman Satish Kumar filed statement of claim, with the averment, that he was appointed as Part Time Chowkidar by respondent no.3 on 18.01.2000(Annexure C-1). The name of workman was sponsored by Employment Exchange and the same is evident from the appointment order of the workman. The workman took the charge to the post of Part Time Chowkidar w.e.f. 22.01.2000(Annexure C-2). The workman performed his duties as part time Chowkidar continuously for 7 hours a day without any break till his termination on 21.07.2011. During the period of his service from 18.01.2000 to 21.07.2011, the work and conduct of the workman remained satisfactory and no complaint was ever communicated to the workman. The workman continued his service from 10 p.m. to 5 a.m. without any break including Sunday/Holidays/Rest days and having completed 240 days in every calendar year preceding the date of his termination on 21.07.2011. The said termination was in violation of Section 25-F of the Act. The workman has also approached to the Hon'ble Central Administrative Tribunal, Chandigarh(hereinafter called as CAT) and filed O.A. No.748/HR/2007 and CAT had directed the management to consider the case of the workman for regular appointment. The termination of services of workman is illegal, void-ab-initio and is violative of provisions of Act. It is therefore, prayed that the management be directed to reinstate the workman into service w.e.f. 21.07.2011 along with all consequential benefits.

2. Respondent/management has filed its written statement, alleging therein that the workman was appointed as part time Chowkidar on 18.01.2000 and posted at Railway Mail Service Rest House Kalka under

Record Office 'HR' Division Kalka vide letter dated 18.01.2000. The workman has filed O.A. No.748/HR/2007 claiming regularization of his service which was dismissed by the CAT vide its order dated 24.08.2009(Annexure R-1), observing that case of applicant be consider as and when his turn comes for regularization.

3. Since the engagement of the workman is not in consonance with the departmental service rules and Article 14 and 16 of the Constitution of India therefore, the workman cannot seek the relief of re-instatement in service and consequently, the instant claim petition is liable to be dismissed. The services of the workman were dispensed with as per the directions contained in Chief Postmaster General Haryana Circle Ambala letter No.Staff/70-2/Casual Labour/2008 dated 18.07.2011(Annexure R-3). Accordingly, the management dispensed with the services of workman vide Memo dated 29.07.2011(Annexure R-4). The workman at the time of taking charge on 22.01.2000(Annexure R-5) has tendered a declaration that he would not claim temporary or regular absorption in Class-IV(Group-D) cadre at any time in future on the basis of his appointment. As and when required the workman was engaged as substitute for other duties for which he has been paid as per Rules. Workman was paid Rs.956/- basic allowance per month plus DA admissible from time to time. The workman was engaged for additional duties against Group-D post and GDS post as and when required in connection with shortage of staff due to weekly off/leave etc. The workman was not engaged as daily wagger but was engaged as substitute for stop-gap arrangement. The workman was purely contingency paid employee. It is therefore, respectfully prayed that the claim of the workman be dismissed with costs.

4. Parties were given opportunity to lead evidence.

5. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with documents Ex.WW2/A to Ex.WW9/A, there is no document exhibit WW7/A and has been cross-examined by the learned counsel of management.

6. The management has examined MW1 Pardeep Kumar(Superintendent Railway Mail Services), HR Division, Ambala, who filed his affidavit in evidence as Ex.MW1/A along with documents Ex.MW1 to Ex.MW7 and has been cross-examined by the learned counsel of workman.

7. I have given due consideration to the arguments advanced by the learned counsels for the parties.

8. Workman in his affidavit dated 3.6.2015 has claimed that management issued notice dated 23.07.1999 for filling up the post of part time Chowkidar vide Ex.WW2/A dated 23.07.1999 and later on he applied for the said post and was issued interview letter Ex.WW3/A dated 05.10.1999 and was given appointment letter Ex.WW4/A dated 18.01.2000. In pursuance thereof, he joined at RMS office Kalka vide Ex.WW5/A dated 22.01.2000. He also maintained that he perform his duty for 7 hours a day i.e. 10 pm to 5 am without any break. He also stated that he filed OA No.748/HR/2007 before the CAT for considering his case for promotion in Group D. The said OA was dismissed by the CAT vide order dated 24.07.2009 with the direction to consider the case of the workman. Instead of considering his case, his services were dispensed with on 21.07.2011 without following the procedure laid down in the Act. He was not given any compensation under Section 25-F of the Act and he also claimed that management had issued policy dated 17.02.1988(WW6/A) and instruction dated 30.06.1989(WW8/A) vide which he was required to be regularized.

9. In his cross-examination he has specifically stated that he is not working anywhere.

10. On the other hand, the management has examined Pardeep Kumar, Superintendent, RMS HR Division as MW1 who filed his affidavit Ex.MW1, maintaining therein that this Court has no jurisdiction to adjudicate the instant dispute as workman had filed earlier OA No.748/2007 claiming regularization which was dismissed on 24.08.2009. It was maintained in the said order dated 24.08.2009 that workman does not have any individual right for regularization nor he can claim priority over the GDS category. It is admitted that he was appointed as part time Chowkidar on 18.01.2000 and his services were dispensed with as per the direction contained in the letter dated 18.07.2011(Ex.MW4) and he was issued memo dated 29.07.2011(Ex.MW5). Even workman at the time of taking charge on 22.01.2000(Ex.MW6) has tendered a declaration that he would claim temporary or regular absorption in Class-IV(Group D) cadre at any time in future on the basis of his appointment.

11. In his cross-examination, this witness has stated that no holiday or rest was given to the workman as the workman was provisionally appointed as part time Chowkidar. The regular employees are given weekly off as per Rules of Govt. of India. The allowances of the workman was Rs.956+DA which was paid from contingency allowance and it was paid on monthly basis.

12. There is no dispute about the preposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made

to Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.

13. From the aforesaid evidence led by both the parties, it clearly emerges that workman was appointed on 18.01.2000 vide appointment letter Ex.WW4/A and he had taken over the charge on the post of part time Chowkidar on 22.01.2000 vide Ex.WW5/A. In pursuance of the letter dated 18.07.2011(Ex.MW4), the services of the workman were dispensed with vide Ex.MW5 dated 29.07.2011. So there is no dispute about it that workman had worked for 240 days in the preceding year prior to this dispensing of his services on 29.07.2011 and admittedly, no retrenchment compensation had been paid to the workman as per Section 25-F of the Act.

14. Now the question arises whether postal department is an "industry"? In this regard, it is pertinent to mention here that AR for management while placing reliance upon the case titled as Sub-Divisional Inspector of Post, Vaikam Vs. Theyyam Joseph Etc. Civil Appeal No.3385-86 of 1996, decided on 2.2.1996 decided by the Hon'ble Supreme Court of India has contended that Postal Department is not an "Industry". However, the said contention of the Ld. AR for management is not tenable in view of the fact that the said case law of the Hon'ble Supreme Court was overruled by the Hon'ble Supreme Court of India in its subsequent judgment titled as General Manager, Telecom Vs. S. Srinivasa Rao & Ors., decided on 18.11.1997, wherein the Hon'ble Supreme Court has held as follow:-

A two-Judge bench of this Court in Theyyam Joseph's case (1966)8 SCC 489 (supra) held that the functions of the Postal Department are part of the sovereign functions of the state and it is, therefore, not an 'industry' within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-judge Bench decision in Bangalore Water Supply (supra). In a later two-judge Bench decision in Bombay Telephone Canteen Employees' Association case - AIR 1997 SC 2817, this decision was followed for taking the view that the Telephone Nigam is not an 'industry'. Reliance was placed in Theyyam Joseph's case (1996) 8 SCC 489 (supra) for that view. However, in Bombay Telephone Canteen Employees' Association case (i.e. the latter decision), we find a reference to the Bangalore Water supply case. After referring to the decision in Bangalore Water Supply, it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequence is 'catastrophic'. With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven judge Bench decision in Bangalore Water Supply case (supra) by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply (supra) or to by pass that decision so long as it holds the field. Moreover, that decision was rendered long back - nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case (1978) 2 SCC 213. We must therefore, add that the decisions in Theyyam Joseph (1996) 8 SCC 489 and Bombay Telephone Canteen Employees' Association (AIR 1997 Supreme Court 2817) cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail.

So in view of the above observation of the Hon'ble Supreme Court, it is held that Postal Department is an "Industry".

15. So far as the filing of OA bearing No.748/2007 by the workman before the CAT, Chandigarh, due to that he was not competent to file the present case as argued by the AR for the management is concerned, the same is devoid of merit as the AR for management has failed to show me any case law that the present case is not maintainable.

16. Whether the applicant is falling under the definition of "workman". To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reliance can be made to the decision in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that

eventuality such a person would be covered by the definition of “workman” as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a “workman” within the Industrial Disputes Act, 1947.

17. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement with continuity of service. It is proved on record that the workman has worked from 18.01.2000 to 21.07.2011 as part time Chowkidar and his services were dispensed with vide memo dated 29.07.2011 (Ex.MW5) without complying with the provisions of Section 25-F of the Act.

18. The Hon’ble Apex Court in case “Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya” reported as (2013) 10 SCC 324 has held as under:-

“The propositions which can be culled out from the aforementioned judgments are:

- i) *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- ii) *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”*

19. The Hon’ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman’s service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as void ab initio, sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month’s notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).

20. A Bench of three Judges of the Hon’ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80, held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of her earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman along with payment of back wages.

21. However, Hon’ble Apex Court in the case General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716 observed as under :-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the

award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

22. Having regard to the legal position as discussed above and the facts, this Tribunal is of the firm view that the claimant/workman has been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that he has specifically pleaded that he is not working anywhere. Moreover, nothing has been asked from this witness regarding his employment/termination as such, the factum of his unemployment is unrebutted as management has not submitted any cogent evidence with respect to his future employment after the alleged retrenchment/termination. Hence, the claimant/workman is entitled for reinstatement into service on the same post from the date of his termination with 50% back wages inasmuch as termination of claimant/workman is per-se illegal.

23. So far as this contention of the learned AR for management vide which workman has given undertaking Ex.MW6 dated 22.01.2000 that his services can be terminated without any notice and he would not put any case for regularization or absorption is concerned, the same is devoid of any merit as the said undertaking is against the law as it prohibits the workman for resorting to the provision of law and as such undertaking Exhibit MW-6 is having no meaning in the eyes of law.

24. So far as this claim of the workman that his services may be regularized in this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

x x x x

(k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

And ID Act was amended adding Section 2-A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2-A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of **Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965**, also support the above view.

25. The Hon'ble Karnatana High Court in the case titled as **Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000**, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

26. The Delhi High Court in the case of **Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007**, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

27. Thus, workman cannot be regularized as his case was not sponsored by any union or group of employees. The Award is passed accordingly.

28. However, in view of above discussion the claimant-workman is entitled for reinstatement into the service on the same post from the date of his termination with 50% back wages in as much as termination of claimant-workman as per-se illegal.

29. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer-cum-Link Officer